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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK

DEMETRIC DI-AZ, OWEN DIAZ AND)	
LAMAR PATTERSON)	
)	
)	
Plaintiffs,)	
)	
vs.)	No. C 17-6748 WHO
)	
TESLA, INC., dba TESLA MOTORS,)	
INC., CITISTAFF SOLUTIONS, INC.,)	
WEST VALLEY STAFFING GROUP,)	
CHARTWELL STAFFING SERVICES, INC.,)	
and DOES 1-50, inclusive,)	
)	San Francisco, California
Defendants.)	Friday
)	September 24, 2021
)	8:00 A.M.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

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- Tesla, Inc.

- - -

Friday - September 24, 2021

8:30 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of presence of prospective jurors:)

THE CLERK: We are here for jury selection in Case Number 17-6748, Diaz vs. Tesla, Incorporated.

MR. ALEXANDER: Good morning, Your Honor. Bernard Alexander on behalf of the plaintiff, along with Larry Organ and Cimone Nunley.

THE COURT: Good morning.

MS. KENNEDY: Good morning, Your Honor. Tracey Kennedy on behalf of Tesla, along with Patty Jeng and Sue Haines.

THE COURT: Welcome.

All right. A few things. One is that there has been an accident on the Bay Bridge that has delayed some of the jurors so we'll get going when we get going.

There are a few things that I have that I wanted to discuss, and I don't know whether the parties have anything they wanted to tell me.

But, first, with respect to the preliminary injunctions, I assume that there are no objections to them, and we'll be set to go on Monday morning?

MS. KENNEDY: That's correct, Your Honor.

1 **THE COURT:** Okay. Second, there is an issue raised
2 regarding the McGinn deposition, and in that deposition there
3 was an objection re the 30(b)(6) objection raised and it wasn't
4 described in the information that was provided to me so I
5 couldn't tell what the problem with that was.

6 **MR. ORGAN:** So, Your Honor, I could at least speak to
7 it.

8 So --

9 **THE COURT:** Could you speak into the microphone?

10 **MR. ORGAN:** Yes, sir.

11 I could speak to it, Your Honor, as I was at the
12 deposition. I think the confusion was they had some objections
13 as to the topics so that they produced the PMK subject to the
14 objections. I think the topics that we listed in the
15 designation were covered, though, in terms of they were
16 producing that person on those topics subject to their
17 objection. I can go back and check to make sure that that's
18 not misrepresenting what the witness was testifying about,
19 Your Honor --

20 **THE COURT:** Okay.

21 **MR. ORGAN:** -- if you'd like.

22 **THE COURT:** Ms. Kennedy, do you know one way or
23 another?

24 **MS. KENNEDY:** Your Honor, I don't recall the exact
25 objection. I could take a look at it. I just don't recall off

1 the top of my head.

2 **THE COURT:** Okay. So for the playing of the
3 depositions, the -- I would not -- I would like to have all of
4 the objections deleted from the tape, and they are all
5 overruled except for the 30(b)(6) one. I just -- I want to be
6 sure that -- what that's about. And I would allow the
7 counterdesignations. So that's -- that's with McGinn.

8 You have now agreed with respect to the entity
9 interrogatory responses, and so they will not come into
10 evidence.

11 With respect to Demetric Di-az's deposition, if he's in
12 Soledad, that's more than 100 miles away and his testimony I
13 think has always been anticipated. There were several Motions
14 in Limine that we dealt with with respect to that. His
15 deposition has been taken.

16 Even if the plaintiff had done a writ ad testificandum, I
17 doubt that he would have been able to get here during the
18 pandemic, and there's no prejudice I think to the defendant.
19 So I'm going to allow his deposition testimony to the extent
20 that it is designated by both parties. And I'm not going to --
21 if the plaintiff is -- intends to use his deposition, the
22 defendants can use his job application.

23 And then the only other thing that I wanted to raise now,
24 and nobody has asked me to rule on this and I'm happy not to,
25 but I wonder whether you have a common understanding of how the

1 term "nigger" is going to be used in this courtroom.

2 **MR. ORGAN:** Your Honor, it's our intent as counsel to
3 refer to it typically as the "N" word unless there's ambiguity,
4 and I think Mr. Alexander wants to be heard on this.

5 **MR. ALEXANDER:** There might be one use of it by me,
6 but in questioning there are times when defense counsel has
7 used the term and it's being in the video. So in the video you
8 will hear it used, but in the courtroom it will not be
9 regularly used. It will be an exception when it is.

10 **THE COURT:** Okay.

11 **MS. KENNEDY:** Your Honor, I would agree with that.
12 We plan on using it as the "N" word unless it's in an
13 interrogatory response or some other testimony.

14 **THE COURT:** Excellent. Okay. That's fine.

15 Mr. Organ.

16 **MR. ORGAN:** Yes, Your Honor. Just in terms of
17 clarification, with respect to witnesses, our view is that the
18 witness should be able to testify whatever they heard or in the
19 general "N" word term if they don't feel comfortable saying it.

20 **THE COURT:** Yeah. So the -- I'm not -- I don't
21 disagree with you, and I think the judicious manner in which
22 you've described the term will be used by the lawyers is
23 appropriate and, you know, overuse I think does -- will run
24 into 403 issues and all also be probably offensive to everybody
25 in the courtroom. So I think you all understand that so that's

1 fine.

2 So those were the, I think, the pending issues that I'm
3 aware of.

4 Mr. Alexander or Mr. Organ, is there anything else that we
5 need to do before the jury comes in?

6 **MR. ALEXANDER:** Not -- Your Honor, not -- not that
7 I'm aware of. We have had some discussion about some jurors
8 that we've stipulated that they would be grounds for hardship,
9 and so if the Court would consider those. I had not finished
10 speaking to Ms. Kennedy about it; but of the people that we had
11 overlap, the three that we were all able to agree on are
12 Number 3, Number 17, and Number 27.

13 So the parties are in agreement with that. If it would be
14 the Court's pleasure, we think that there's hardship on those
15 individuals.

16 **THE COURT:** All right. They are on a list that I
17 have as tentative hardship. If you want to stipulate to their
18 dismissal, we can let the jury office know now and then that
19 would reduce the number of people in the courtroom.

20 **MS. KENNEDY:** Yes, Your Honor.

21 We also had another two as well that --

22 **MR. ALEXANDER:** We should talk off the record.

23 **MS. KENNEDY:** Okay.

24 **MR. ALEXANDER:** But with those three, there's
25 definite agreement.

1 **THE COURT:** Okay. And if you have agreement on two
2 others, just let Ms. Davis know and have her come back. I do
3 have a list of other people that might well qualify.

4 **MS. KENNEDY:** Yes, Your Honor. I want to make sure
5 that, so the ones that we stipulated to are Juror No. 3, Juror
6 No. 17, and Juror No. 27 --

7 **THE COURT:** Yes.

8 **MS. KENNEDY:** -- is that correct?

9 **MR. ALEXANDER:** Yes.

10 **THE COURT:** Mr. Organ.

11 **MR. ORGAN:** Yes, Your Honor. I can't remember
12 whether or not we brought this up with Your Honor before
13 relative to stock ownership. Was the Court intending to ask
14 that question of jurors?

15 **THE COURT:** We have -- there is a list of questions
16 regarding Tesla, and I'm happy to make sure that that's part of
17 it.

18 **MR. ORGAN:** Thank you, Your Honor.

19 **MS. KENNEDY:** Your Honor, one question in light of
20 your statements earlier. Are we going to be voir diring the
21 jurors on the "N" word or is that something that we will be
22 required to do?

23 **THE COURT:** You would probably like me to do that.

24 **MS. KENNEDY:** That was my backhanded way to ask you
25 to do that, yes, Your Honor.

1 **THE COURT:** Okay. Are you -- Okay. I'm happy to
2 take that on.

3 There were -- in the questions that you both provided, the
4 voir dire questions that you both provided, I'm going to use
5 most of them, I think, to -- and that should tease that issue
6 out, but I will -- I will ask that question directly.

7 **MS. KENNEDY:** Thank you, Your Honor.

8 **THE COURT:** Okay. Anything else that we should do
9 before the jury comes in?

10 (No response.)

11 **THE COURT:** All right. Well, let me know about the
12 stipulation on the other two. Thank you.

13 **MR. ORGAN:** Oh, Your Honor, I don't know that you've
14 met plaintiff before, but Owen Diaz is here.

15 **THE COURT:** Ah, excellent.

16 **MR. DIAZ:** Good morning, Your Honor.

17 **THE COURT:** Mr. Diaz, good morning. Glad to see you.
18 We look forward to moving through.

19 And the Tesla representative I have not met either.

20 **MS. KENNEDY:** We have two. This is Joseph Alm and
21 Yusuf Mohamed.

22 **THE COURT:** Great. Welcome.

23 All right. See you when the jury comes or when you have
24 stipulated, and I'll put that on the record. Thank you.

25 //

1 (Whereupon there was a recess in the proceedings
2 from 8:41 a.m. until 9:27 a.m.)

3 (Proceedings were heard out of presence of prospective
4 jurors:)

5 **THE COURT:** So I'm about to provide you with the
6 supplemental questionnaires. I just -- I wanted to let you
7 know that there have been a number of prospective jurors who
8 have self-screened for COVID and are not here. There are also
9 a couple of other people who are just not here.

10 So we will end up having 21 people come down. So that
11 should be fine, but we'll see.

12 So with that, Ms. Davis, you can hand those out and the
13 jurors will start coming down relatively soon and we'll get
14 going.

15 (Whereupon there was a recess in the proceedings
16 from 9:28 a.m. until 9:50 a.m.)

17 **THE CLERK:** All rise. The Honorable William H.
18 Orrick presiding.

19 **THE COURT:** Good morning everybody.

20 All right. Ladies and gentlemen, welcome. I'm glad to
21 see you hear today, and thank you for being willing and able to
22 participate in one of the foundations of our democracy and
23 justice system, the jury trial.

24 I'm going to talk about that in a little bit, but first I
25 want to start by telling you that your health and safety is

1 utmost in my mind and in the mind of the court as a whole.

2 And I should introduce myself. I'm Judge William Orrick
3 and I'm fortunate enough to sit in this courtroom a lot. So
4 it's good to have you here.

5 So we've put into place a comprehensive, thoughtful, and
6 evidence-based plan for conducting the trial. We've had public
7 health experts analyze what we've done to make sure that it's
8 appropriate. You've already seen some of the policies that we
9 have in action, such as distancing and mask wearing and
10 reduction of people in the building.

11 We've assessed our ventilation system, we've maximized the
12 intake of fresh air in the courtroom, and we have what's
13 considered a high level of filtration for office buildings.

14 So our safety protocols are designed to keep us all safe
15 and allow us to do the work that our Constitution requires.

16 The protocols require us to do some things that we don't
17 ordinarily do in court. Social distancing in the courtroom is
18 one. Mask wearing is another. The exception to mask wearing
19 will be when the lawyers are speaking and during trial the
20 witnesses may choose to unmask as long as they're vaccinated.
21 I can tell you that all the lawyers and their teams and the
22 plaintiff, they're all vaccinated. All the courtroom personnel
23 are and so am I.

24 I usually start jury selection by talking about the
25 history of the right to a trial by jury to impress upon you how

1 important it is. Now, it comes from the Magna Carta in 1215.
2 It used to be that the king could just decide willy-nilly what
3 he wanted to do with people. Then the noblemen said, "No, we
4 want to play too," and they were able to sit on a jury and then
5 it was just people who had property, white people, men. But
6 now that right belongs to all of us, and I think you already
7 know how important this is because you answered the call to
8 jury service in this most unusual time in our lives.

9 I'll just say this. In a world where the fairness of our
10 justice system and the rule of law is questioned, the right to
11 a jury trial ensures that cases get decided by a group of
12 people who aren't appointed by a politician but selected
13 randomly from the area where the case is proceeding, and
14 they're picked not by the judge but by the parties to the
15 lawsuit.

16 Our Constitution recognizes that there are just some cases
17 where the stakes are too high to leave it up to just the Court
18 to decide, particularly a judge. Each of you has the
19 experience to judge the facts and consider the perspectives of
20 other jurors, and it's the diverse experiences that you bring
21 to jury service that's the best protection for the right to a
22 fair trial.

23 As a juror, you'll apply the law that I give you to what
24 you learn in this courtroom about this case from the witness
25 stand and witnesses that may testify by video and you'll render

1 the verdict.

2 What you think and how you work with others will be
3 critical in deciding a matter that has real impact on our
4 society.

5 So I just want to underscore for you how important what
6 you're being called to do is. I know a lot of people don't
7 like being called to jury service, and I know that you all have
8 important things to do in your lives and that this isn't
9 convenient and it seems like an imposition, but it is your duty
10 as a citizen and it's essential if we're to deliver the
11 promises of justice for all.

12 So with that, Ms. Davis, would you administer the oath,
13 please.

14 (Jury panel sworn.)

15 **THE CLERK:** Thank you. You may be seated.

16 **THE COURT:** So let me tell you a little bit about
17 this case, how long it's going to take, what the trial days are
18 going to look like, and what's going to happen today as we pick
19 the jury.

20 So first a description of the case. Plaintiff Owen Diaz
21 claims that while working at the Tesla factory in Fremont,
22 California, he was subjected to a hostile work environment
23 based on his race, being African-American or black.

24 In addition, Mr. Diaz claims that Tesla, Inc., failed to
25 take all reasonable steps to prevent race-based harassment

1 towards him, including the use of the "N" word, and failed to
2 adequately remedy the harassment after Tesla received notice of
3 it.

4 Mr. Diaz also claims that Tesla, Inc., negligently
5 retained factory workers and supervisors who engaged in
6 harassing conduct toward him.

7 The plaintiff Owen Diaz has the burden of proving these
8 claims by a preponderance of the evidence.

9 The defendant, Tesla, Inc., doing business as Tesla
10 Motors, Inc., denies these claims. Tesla denies that Mr. Diaz
11 was subject -- subjected to a hostile work environment based on
12 his race and denies that it failed to take all reasonable steps
13 to prevent race-based harassment in the workplace.

14 Tesla also denies that it negligently hired, retained, or
15 supervised factory workers, employees, or contractors who
16 Mr. Diaz claims engaged in race-based harassing conduct towards
17 him.

18 So this will be a relatively short case if all goes well.
19 I'm anticipating that the evidence will be completed and the
20 case given to the jury for its deliberations by a week from
21 Monday.

22 Thank you all for filling out the questionnaires that the
23 jury office gave to you. I'm going to take a couple of hours
24 this morning telling you about jury service and asking
25 questions that may bear on your ability to serve as a juror.

1 Then the lawyers will ask you some more questions for about an
2 additional 15 minutes or so each.

3 I'm going to take a break every hour and a half or so, so
4 we should be breaking at around 11:30 for -- for a little bit.

5 And if my questions to you raise any personal matter that
6 you would prefer to tell me and the lawyers privately, we can
7 do that after a break -- during a break after I've finished all
8 my questions, and otherwise I'm going to ask you to step to the
9 microphone that's in the middle of the courtroom when you're
10 answering questions.

11 So it is my hope and expectation that this process will be
12 finished today and that the trial will start on Monday.

13 Our trial day will run from 8:30 a.m. to 1:30 p.m. We
14 have a 15-minute break at about 10:00 and another at about
15 11:45. The reason that the trial day stops at 1:30 is I have
16 other matters that are scheduled later in the afternoon.

17 I found when I was a trial lawyer it really helped to have
18 the afternoons to prepare for the next day, and I think jurors
19 also find it useful to be able to continue some of the rest of
20 their lives, work lives, errands, and those sorts of things,
21 and also to get out before the traffic rush at the end of the
22 day.

23 So -- and we'll have trial every day of the week.

24 I know that jury service asks quite a bit of you. I want
25 to promise to be as efficient as I can be with your time. If I

1 need to meet with the lawyers, I do that before 8:30 or after
2 1:30 unless there's something unusual.

3 I'm going to be prompt. The lawyers are going to be
4 prompt. I'm going to ask you to be prompt. There are a lot of
5 people involved in a trial and making any of us wait because
6 one person isn't watching the clock is just discourteous.

7 If anyone learns of COVID contact, gets sick, or has a
8 personal emergency during trial that causes you to need to be
9 excused from further service, please notify my Courtroom Deputy
10 Ms. Davis, who is here, and she will get in touch with me. And
11 she'll provide everybody with contact information who's
12 selected to serve on the jury.

13 So now we're going to move to jury selection. I'm going
14 to ask the lawyers to introduce themselves, their clients.
15 You've looked at the -- you've all seen the list of witnesses
16 who may be testifying so they don't have to repeat that.

17 After that, I'll ask you questions and talk a little bit
18 about the law that applies to your role as jurors. And once
19 the questioning is over, I will determine whether anybody
20 should be excused for hardship or cause, and then the lawyers
21 will make their selections and we'll have the jury.

22 So, first, let's have the lawyers introduce themselves.
23 Let's start with the plaintiffs.

24 **MR. ALEXANDER:** Thank you, Your Honor.

25 Good morning. My name is Bernard Alexander and on the

1 legal team Larry Organ and Simone Nunley; and also assisting
2 us, Harry Plotkin and Sabrina Grislis and the gentleman here --
3 if you could stand up, please -- Owen Diaz. This is the
4 plaintiff.

5 Thank you.

6 **THE COURT:** Thank you, Mr. Alexander.

7 And so I see a hand. And so, first, could you indicate
8 what juror number you are and then please come to the
9 microphone and let me know what's on your mind.

10 **PROSPECTIVE JUROR NO. 24:** This should be simple.
11 I'm sorry, but I'm -- I was having a hard time hearing you. I
12 was thinking maybe you could raise your microphone. I'm barely
13 hearing you in the back of the room. That's all. Sorry.

14 **THE COURT:** Great. And you are juror number?

15 **PROSPECTIVE JUROR NO. 24:** Number 24.

16 **THE COURT:** 24. Thank you very much.

17 (Pause in proceedings.)

18 **THE COURT:** Great. The -- thank you for raising
19 that.

20 Anybody who does have a hearing issue as we go forward --
21 the combination of masks and needing to speak into a microphone
22 is also not always what we're used to, so there can be those
23 problems, and so thank you for bringing that to our attention.

24 All right. Let's go to the defense. Ms. Kennedy.

25 **MS. KENNEDY:** Hi. Good morning. My name is Tracey

1 Kennedy and I'm the lead trial lawyer for Tesla. My legal team
2 is Patricia Jeng, Susan Haines, Stephanie Limbach.

3 And my -- also part of the team are Rohan Beeton and
4 Michelle LaRocca (phonetic spellings).

5 The representatives from Tesla are Joseph Alm and Yusuf
6 Mohamad.

7 Thank you.

8 **THE COURT:** Thank you.

9 Does anybody on the jury know any of the people who were
10 just introduced by either the plaintiffs or the defendants?

11 (No response.)

12 **THE COURT:** All right. As you heard my description
13 of the case, has anybody in the jury pool heard of this case
14 from any source whatsoever before today?

15 (No response.)

16 **THE COURT:** Has anybody read anything about the case?

17 (No response.)

18 **THE COURT:** All right. Has anyone talked to you
19 about the case?

20 Juror No. 24, come on up to the microphone.

21 **PROSPECTIVE JUROR NO. 24:** Over the years I've read a
22 lot about Tesla and their practices. You have innuendo and
23 rumors. As a citizen, it's hard to tell what's true and what's
24 not true, but I have read a lot about Tesla. In fact, I was an
25 investor in the company for a little while, and that's --

1 that's what I have to say.

2 **THE COURT:** So with respect to that, will you be able
3 to set aside anything that you have read about Tesla and
4 evaluate the case based on just the information that comes in
5 in this courtroom and based on the legal instructions that I
6 make and on your evaluation of the credibility of the witnesses
7 and the facts in this case? Will you be able to do that?

8 **PROSPECTIVE JUROR NO. 24:** I can try, but I feel like
9 I have a bias against Elon Musk. I think he walks on water and
10 he feels like he can get away with anything.

11 **THE COURT:** And Mr. Musk is not on trial in this
12 case. The -- do you understand that?

13 **PROSPECTIVE JUROR NO. 24:** I understand that, but his
14 company. He runs the company. He sets the policies. He sets
15 the standards, and I believe that the culture that he -- I
16 don't know -- that the culture he's developed permeates through
17 the country -- through the company. So when I think of Tesla,
18 I think of Elon Musk. I have a hard time separating the two.

19 **THE COURT:** Okay. All right. Well, thank you for --
20 for your thoughts. You can sit down.

21 All right. So --

22 **MR. ALEXANDER:** Your Honor, there --

23 **THE COURT:** Oh, I'm sorry. Is there somebody --
24 please come forward.

25 And what is your juror number?

1 **PROSPECTIVE JUROR NO. 23:** Number 23.

2 **THE COURT:** Number 23, okay.

3 **PROSPECTIVE JUROR NO. 23:** So my son used to work at
4 Tesla, and we know quite a few senior executives there. But in
5 terms of this case, I'll try my best, but won't be able to
6 guarantee that, you know, from my past experiences and
7 knowledge that -- I mean, I'll try to be fair, but...

8 **THE COURT:** All right. Well, so the -- that is --
9 that will be your duty. I will tell you that your duty is to
10 evaluate the evidence fairly and decide the case just based on
11 what you learn about the case together with your fellow jurors
12 in this courtroom and then apply the law that I give you to the
13 facts. Would you be able to do that?

14 **PROSPECTIVE JUROR NO. 23:** Yeah. I just wanted to
15 let you know. That's all.

16 **THE COURT:** Okay. Thank you very much.

17 All right. So this is a civil case. So the jury needs to
18 include a minimum of six people. I'm going to want to have
19 eight or nine jurors to ensure against somebody getting sick or
20 having other troubles. We don't want you to come into court if
21 you're sick. And everybody who is selected will participate in
22 the jury deliberations.

23 In the trial of this case, as I was just saying, each side
24 is entitled to have a fair, unbiased, and unprejudiced jury.
25 So the purpose of the questions that I'm going to be asking is

1 to enable me to determine whether anybody should be excused for
2 cause and to enable the counsel for the parties to exercise
3 their individual judgment with respect to peremptory
4 challenges. Now, those are challenges for which no reason
5 needs to be given.

6 It's important that you disclose any reason or fact why
7 you might be biased or prejudiced in any way in answer to the
8 questions that you're asked.

9 As we go forward, sometimes I'll ask questions that call
10 for a "yes" or "no" response. If your answer is "yes," raise
11 the card at your seat and I may follow-up immediately or ask to
12 speak individually with you.

13 And let me repeat. If at any time you're asked a question
14 that you think calls for a personal or embarrassing response,
15 let me know if you prefer to answer it privately. So that the
16 lawyers and court reporter can listen, but the other members of
17 the jury cannot. No one wants to pry into your personal
18 affairs, but the question is being asked because the answer
19 could have an impact on your ability to sit as a juror in this
20 case.

21 So we just -- we just had a couple of people who were
22 aware of or had some experiences with Tesla. Let me ask the --
23 everybody: Have you or anyone close to you ever worked for or
24 at the Tesla Fremont facility?

25 Juror No. 12, would you step to the mic?

1 And what did you do at Tesla?

2 **PROSPECTIVE JUROR NO. 12:** It was my cousin, and she
3 worked there for a few years at the Fremont facility and she
4 was in HR actually.

5 **THE COURT:** Okay. And did anything that you learn
6 from her, would that impact your ability to sit as a fair and
7 impartial juror in this case?

8 **PROSPECTIVE JUROR NO. 12:** I don't think so. She
9 was -- so she only worked there for a few years, and then she
10 ended up getting fired and I was told from her to not like
11 Tesla. So -- but I will -- I could be impartial and unbiased
12 and all of that, so...

13 **THE COURT:** You haven't had any personal experiences
14 with Tesla?

15 **PROSPECTIVE JUROR NO. 12:** No.

16 **THE COURT:** And the key for a juror is to be able to
17 sit here and listen and judge people fairly as they come in
18 about this particular experience, which obviously is not your
19 cousin's experience. So do you think you would be able to do
20 that?

21 **PROSPECTIVE JUROR NO. 12:** Yes.

22 **THE COURT:** Great. Thank you.
23 Anybody else?

24 (No response.)

25 **THE COURT:** Okay. Have you or anyone -- oops, I'm

1 sorry. We're spread around the courtroom, so please come up to
2 the mic.

3 And what's your juror number?

4 **PROSPECTIVE JUROR NO. 33:** 33.

5 **THE COURT:** Okay. And so tell me about your
6 experience with Tesla.

7 **PROSPECTIVE JUROR NO. 33:** I didn't personally work
8 there, but I had a good friend and my aunt actually worked
9 there. I didn't hear any -- anything really bad too much about
10 Tesla. And my aunt, I guess she was -- she felt like she was
11 wrongfully terminated too, but, you know, it is what it is.

12 **THE COURT:** So do you think that what you have heard
13 from her and what you know from her would impact your ability
14 to evaluate the evidence fairly here and treat both sides
15 fairly?

16 **PROSPECTIVE JUROR NO. 33:** I don't -- yeah, hopefully
17 I'll be able to separate it.

18 **THE COURT:** Okay. Great. Thank you.

19 Has anyone here either owned or leased a Tesla?

20 Okay. You don't need to step up to the mic, but it is --
21 would you raise your juror numbers just so that I know?

22 Juror No. 8 and Juror No. 20, is there anything about your
23 experience with that vehicle, that owning or leasing the Tesla,
24 that would impact your ability to sit as a fair and impartial
25 juror here? If the answer is "yes," I'd like you to come to

1 the microphone; but if the answer is "no," you may remain
2 seated.

3 (No response.)

4 **THE COURT:** Everybody's sitting. Okay.

5 Does anybody own stock in Tesla?

6 Juror No. 20 again and Juror No. 8. You both own stock.

7 Is there anything about that, owning stock, that would impact
8 your ability to be fair to both sides?

9 And everybody -- both of you are shaking your heads "no,"
10 and that's fine.

11 Has anybody here or anyone close to you ever worked in an
12 automotive manufacturing plant or company?

13 (No response.)

14 **THE COURT:** Has anybody worked for a tech company in
15 Silicon Valley?

16 All right. So let's start with the Juror No. 5. Would
17 you come over to the microphone, please?

18 So where have you or do you work?

19 **PROSPECTIVE JUROR NO. 5:** I'm currently working at a
20 company called Okta, O-K-T-A.

21 **THE COURT:** And what do you do there.

22 **PROSPECTIVE JUROR NO. 5:** I am a manager. I manage
23 an engineering team.

24 **THE COURT:** Great.

25 All right. And have you ever had any connection with

1 Tesla or Elon Musk or SpaceX?

2 **PROSPECTIVE JUROR NO. 5:** No. I probably purchased
3 some stocks, but I don't own anything now. I purchased
4 Space -- Micro Space, whatever that other one. Yeah, but that
5 was in the past. I don't own anything now.

6 **THE COURT:** Okay. Great. Thank you.

7 Who else raised their -- No. 13, if you wouldn't mind
8 coming to the mic.

9 **PROSPECTIVE JUROR NO. 13:** I work in Cisco Systems,
10 San Jose.

11 **THE COURT:** I missed that. I'm sorry.

12 **PROSPECTIVE JUROR NO. 13:** I'm working in Cisco
13 Systems, San Jose.

14 **THE COURT:** Ah. And how long have you been working
15 there?

16 **PROSPECTIVE JUROR NO. 13:** About 16 years.

17 **THE COURT:** And what do you do?

18 **PROSPECTIVE JUROR NO. 13:** I'm a quality assurance
19 engineer, QA engineer.

20 **THE COURT:** Great. And have you ever worked with or
21 had connection with Tesla or any -- or SpaceX or Mr. Musk?

22 **PROSPECTIVE JUROR NO. 13:** No.

23 **THE COURT:** Great. Okay. Thank you.

24 Juror No. 20, come on up.

25 **PROSPECTIVE JUROR NO. 20:** I work for Infinera, it's

1 a telecom company, as a -- my title is director of operation.
2 We used to run the production line in Sunnyvale.

3 **THE COURT:** Okay. And the same -- the same
4 questions. Besides what you've already said, is there -- do
5 you have any connection with Tesla or SpaceX --

6 **PROSPECTIVE JUROR NO. 20:** No.

7 **THE COURT:** -- or Mr. Musk?

8 Okay, thank you.

9 **PROSPECTIVE JUROR NO. 20:** Thank you.

10 **THE COURT:** Juror No. 23.

11 **PROSPECTIVE JUROR NO. 23:** I work for PlayStation and
12 I'm a technical program manager.

13 **THE COURT:** Great. Besides what you've already told
14 us, any other connections?

15 **PROSPECTIVE JUROR NO. 23:** No.

16 **THE COURT:** Thank you.

17 And No. 26?

18 **PROSPECTIVE JUROR NO. 26:** Good morning, Your Honor.

19 **THE COURT:** I'm sorry. I can't hear you.

20 **PROSPECTIVE JUROR NO. 26:** Good morning, Your Honor.

21 **THE COURT:** Good morning.

22 And so where are you -- where have you worked?

23 **PROSPECTIVE JUROR NO. 26:** Previously I worked at
24 Workdek.

25 **THE COURT:** And what were you doing?

1 **PROSPECTIVE JUROR NO. 26:** I was interning as a
2 quality assurance associate at the time.

3 **THE COURT:** And how long were you there?

4 **PROSPECTIVE JUROR NO. 26:** About six months.

5 **THE COURT:** And did you have any connection with
6 Tesla or SpaceX or Mr. Musk?

7 **PROSPECTIVE JUROR NO. 26:** In no way, shape, or form.

8 **THE COURT:** Okay. Thank you very much.

9 **PROSPECTIVE JUROR NO. 26:** You're welcome, sir.

10 **THE COURT:** Anybody else?

11 (No response.)

12 **THE COURT:** All right. Has -- is anybody here --
13 have you or any members of your immediate family or close
14 friends ever worked for a judge or a lawyer or a law office?

15 Juror No. 18, step on up to the microphone, please.

16 **PROSPECTIVE JUROR NO. 18:** Good morning.

17 **THE COURT:** Good morning.

18 And so tell me about your experience.

19 **PROSPECTIVE JUROR NO. 18:** My -- my first office job
20 was for patent and trademark lawyers as an administrative
21 assistant in the trademark department specifically for
22 international, and about a year. It was a very long time ago.

23 **THE COURT:** Was that fun?

24 **PROSPECTIVE JUROR NO. 18:** Some days. Some days not
25 so much.

1 (Laughter.)

2 **PROSPECTIVE JUROR NO. 18:** They were, however,
3 process the Ford lawsuits about the windshield wipers.

4 **THE COURT:** Okay. Great. Thank you very much.

5 **PROSPECTIVE JUROR NO. 18:** Sure. Thanks.

6 I don't know if you also want to know that my current
7 company was working with SpaceX for a research project that was
8 sent up a few years back to the ISS.

9 **THE COURT:** Okay. And does -- and did you -- do you
10 have any direct relationship with them?

11 **PROSPECTIVE JUROR NO. 18:** No. No.

12 **THE COURT:** Is there anything about --

13 **PROSPECTIVE JUROR NO. 18:** Just that we utilized
14 their equipment to get it there.

15 **THE COURT:** Is there anything about that that would
16 impact your ability to be a fair and impartial juror?

17 **PROSPECTIVE JUROR NO. 18:** Not particularly. It got
18 the things where they needed to go.

19 **THE COURT:** Okay. Great. Thank you. I appreciate
20 that.

21 Is there anybody else with respect to SpaceX -- who was
22 any sort of connection with SpaceX?

23 (No response.)

24 **THE COURT:** All right. Is there anyone here who
25 suffers from any mental, physical, or emotional impairment that

1 would make it difficult for you to sit as a fair and impartial
2 in this case.

3 (No response.)

4 **THE COURT:** Is anybody having any trouble
5 understanding what I've been saying today?

6 (No response.)

7 **THE COURT:** So I do appreciate everybody's filling
8 out the questionnaires and the supplemental questionnaires. I
9 have a number of people indicated that either they or a close
10 friend or relative had been discriminated against because of
11 race, ethnic background, gender, religion, sexual identity or
12 orientation, or economic status. And so I wanted to ask those
13 people who were -- who indicated that they had -- that had been
14 their experience some questions about that, and I can do it
15 here in the courtroom; or if you would prefer, we can do it at
16 a break, but I'm now going to ask those folks.

17 Juror No. 2, if you would -- yes. Thank you.

18 So I'm interested -- and you can move that down. There
19 you go.

20 I am interested in what the experience was that you were
21 referring to.

22 **PROSPECTIVE JUROR NO. 2:** Well, my uncle worked for a
23 company here in the city for almost about 20 years. It got
24 bought out recently -- well, not recently, but at the time and
25 the new ownership pretty much kind of pushed everybody out on

1 the top.

2 And he worked there for about, maybe, six months until he
3 kind of noticed the changed offices. He moved locations, and
4 then he started having meetings with the new, like, CFO I
5 guess, and he started to notice that he was feeling more, like,
6 I guess discrimination because everybody at the top was one
7 nationality.

8 And then -- yeah, so he ended up quitting before they
9 could let him go. He really didn't get into much details. And
10 I was working there at the time too so I would see the CFO
11 walking back and forth and he was nice to me, but it was kind
12 of hard to work there knowing he was in a lawsuit with my uncle
13 at the time.

14 **THE COURT:** I'm sorry. I missed that.

15 **PROSPECTIVE JUROR NO. 2:** It was hard to see him
16 while I was still working at the company knowing he was -- he
17 had a lawsuit with my uncle at the time.

18 **THE COURT:** So is there -- despite that experience,
19 would you be able to judge the -- sit and fairly evaluate the
20 evidence in this case which involves claims of discrimination
21 that are denied by Tesla? So you would be -- you'd have to
22 weigh the evidence fairly for both sides. Would you be able to
23 do that?

24 **PROSPECTIVE JUROR NO. 2:** Yes.

25 **THE COURT:** Thank you.

1 Juror No. 7, would you mind stepping up unless -- and if
2 you want to do this personally -- in private, it's perfectly
3 fine. Just let me know.

4 **PROSPECTIVE JUROR NO. 7:** Good morning.

5 **THE COURT:** Good morning.

6 So tell me -- tell me what your -- the experience is that
7 you're referring to here.

8 **PROSPECTIVE JUROR NO. 7:** Well, you know, I came to
9 the United States when I was 16 years old. I have lived here
10 for quite a few years, became a U.S. citizen. But throughout
11 my -- my stay here in the States, you know, I have encountered
12 several cases -- several times when, you know, I feel -- I have
13 felt discriminated against, you know, based on my race.
14 Sometimes -- there has been comments directed to my person.

15 And although -- I think it has affected me in some ways,
16 but, you know, after -- after this many years living here, you
17 know, and becoming part of -- part of society here, you know, I
18 kind of -- I don't know if I have become numb or tried to,
19 like -- kind of like it aside as an isolated incidence, you
20 know, isolated people. I try not to think of general
21 population as, you know, I've targeted by them, you know; but
22 the other -- there's been -- there's been a few -- a few times
23 where I have -- when I have felt targeted.

24 **THE COURT:** And so the -- would you be able to sit
25 and fairly evaluate claims of someone who feels that he was

1 discriminated against and the claim -- and the claims of the
2 company that says that's not what -- that that's not the case?
3 Would you be able to do that?

4 **PROSPECTIVE JUROR NO. 7:** So, yeah, I can -- I can
5 try to put aside my personal experiences, you know, in regards
6 to that, you know, and try to be fair and impartial and, like
7 you said, you know, just consider just what's been presented as
8 evidence.

9 I know this is kind of delicate, you know, as far as
10 putting aside your personal experiences and how -- and how you
11 have felt even beforehand, but, yeah, I can -- I can try to put
12 that aside and just -- just look at what's been presented in
13 front of me.

14 **THE COURT:** So you think you could be fair and
15 impartial?

16 **PROSPECTIVE JUROR NO. 7:** Yes.

17 **THE COURT:** Thank you.

18 Juror No. 11. Good morning.

19 **PROSPECTIVE JUROR NO. 11:** Good morning.

20 **THE COURT:** So what was the experience you were
21 referring to in your supplemental questionnaire answer?

22 **PROSPECTIVE JUROR NO. 11:** I'm not, like, super
23 familiar with it, but when I was younger, my mom told me at her
24 old job she was constantly passed over by her white
25 counterparts even though she was doing more work or the same

1 work as them, and every time she applied for a higher position,
2 she would always be passed up. That was it.

3 **THE COURT:** So is there anything from your mom's
4 experience that you would carry over to this courtroom so that
5 you couldn't treat each side and the evidence that came in
6 fairly?

7 **PROSPECTIVE JUROR NO. 11:** I don't think so. I think
8 I could, like, separate the two.

9 **THE COURT:** Okay. Great. Thank you.

10 Juror No. 12, what were you referring to?

11 **PROSPECTIVE JUROR NO. 12:** So both my mom's white and
12 my dad's Japanese and so they -- like, when they went down to
13 the south, they got a lot of flack for being together. So,
14 yeah.

15 **THE COURT:** And so this is a case that is claiming
16 that there is discrimination based on race that created a
17 hostile environment. Is -- would you be able to listen to the
18 evidence and evaluate it fairly on both sides in order to be a
19 fair and impartial juror?

20 **PROSPECTIVE JUROR NO. 12:** Yes.

21 **THE COURT:** Thank you.

22 And Juror No. 18. What experience were you referring to?

23 **PROSPECTIVE JUROR NO. 18:** So I've had gender
24 discrimination also at work, and I think it -- anyone would be
25 hard pressed not to have experienced other forms in their life.

1 And as a working person, I've helped people communicate with HR
2 and done by standard-type intervention in the workplace, so...

3 **THE COURT:** And so knowing -- having those
4 experiences, knowing what little I've told you about this case,
5 do you think you'd be able to sit as a fair and impartial
6 juror?

7 **PROSPECTIVE JUROR NO. 18:** Yes, I think so.

8 **THE COURT:** Okay. Thank you.
9 Juror No. 20.

10 **PROSPECTIVE JUROR NO. 20:** Good morning again.

11 So usually I don't think there's much discrimination
12 around me, but just recently I've been hearing from my friends
13 saying that they didn't -- I'm from Taiwan but looks like
14 Chinese, but some kids got called COVID because of the recent
15 pandemic. So I think that's -- I heard that -- I heard that on
16 the news, but recently I've got friends' kids that experience
17 this. So I think there may be discrimination still existing in
18 our society.

19 **THE COURT:** Yeah. And so with that reference, do you
20 think you'd be able as to sit as a fair and impartial on the --
21 in this case?

22 **PROSPECTIVE JUROR NO. 20:** I would be fair, yes.

23 **THE COURT:** Okay. Thank you.
24 Juror No. 23. And what experience were you referring to.

25 **PROSPECTIVE JUROR NO. 23:** So I had to -- it was back

1 at school with one of the professors.

2 **THE COURT:** I'm missing that. I hate to --

3 **PROSPECTIVE JUROR NO. 23:** Sorry.

4 I was back at school with one of the professors, there was
5 some discrimination. This was when I was going to school in
6 Boston.

7 **THE COURT:** And, again, given what you know about
8 this case, would you be able to set those experiences aside and
9 sit as a fair and impartial juror?

10 **PROSPECTIVE JUROR NO. 23:** Yes. Yes.

11 **THE COURT:** Thank you.

12 Juror No. 26. So tell me, what was the experience you
13 were referring to or experiences?

14 **PROSPECTIVE JUROR NO. 26:** The experience I was
15 referring to was when I was, I believe, 17 years old. It was
16 my first job at a grocery store, and one of the managers called
17 me the "N" word and I reported this to the shop steward. The
18 shop steward reported this to my manager, and that was it.
19 Nothing happened after that.

20 **THE COURT:** Nothing happened?

21 And so does that experience -- so that's sort of closer to
22 one of the experiences that Mr. Diaz will be describing. Would
23 you be able to set what happened to you in a different
24 employment situation, totally different facts, aside and just
25 judge this case based on what you learn from the witnesses

1 and -- and all the -- and the documents and all the facts that
2 come into this case?

3 **PROSPECTIVE JUROR NO. 26:** Absolutely. I'll be able
4 to set my feelings aside. It will not impair me with this --
5 this case.

6 **THE COURT:** Okay. Great. Thank you very much.

7 **PROSPECTIVE JUROR NO. 26:** Thank you.

8 **THE COURT:** Juror No. 30.

9 **PROSPECTIVE JUROR NO. 30:** Good morning, Your Honor.

10 **THE COURT:** Good morning.

11 What was the experience that you were referring to?

12 **PROSPECTIVE JUROR NO. 30:** Your Honor, I was raised
13 in Hattiesburg, Mississippi. My mother, she was a single mom.
14 She worked in a textile factory and often time she came home
15 and complained about her supervisor calling her the "N" word a
16 few times on the job. Nothing ever transpired from that, but
17 she just kept on working until we eventually got out of
18 Mississippi and moved to California.

19 Whereas, as I was coming up, you know, it was kind of a
20 change in the scenery, but the -- I say the environment --
21 well, what I was feeling was still the same; whereas, there
22 was, I don't know, it felt like some kind of inequities in
23 school where the teachers weren't paying more attention to me
24 where they were paying more attention to white kids, you know.
25 It made me feel a little, I don't know, some kind of way.

1 I don't know. Maybe deep down I kind of vowed that, you
2 know, I would like to correct this here kind of behavior, and I
3 wouldn't -- I don't want to inflict that kind of behavior
4 injustice on anyone as I got older.

5 So as regards to this case, I probably can empathize with
6 this guy's pain, but I feel at the same time I would like to be
7 involved so that I can make this decision the right way just
8 the best way I can.

9 **THE COURT:** So the issue there would be, would
10 everybody be starting out at the same place in your mind? That
11 despite the experiences that you've had and your desire to make
12 things right and a better world and, you know, the -- it's -- I
13 was struck by how many people have had the experience of being
14 discriminated against or having close friends be discriminated
15 against just in your answers.

16 But would you be able to put Tesla and Mr. Diaz at the
17 same starting place? Because you don't know what happened to
18 Mr. Diaz, and he may say one thing, but there may be reasons
19 that you find that either didn't happen or it didn't rise to
20 the level of where I'm going to instruct you the law is. Would
21 you be able to do that?

22 **PROSPECTIVE JUROR NO. 30:** Yes, sir. Yes,
23 Your Honor.

24 **THE COURT:** All right. Thank you.

25 While you're here, let me ask you. The -- in your jury

1 questionnaire when the question was "Is there anything else you
2 want to tell the judge," you wrote down "Guilty." Tell me what
3 you were thinking about there.

4 **PROSPECTIVE JUROR NO. 30:** Judge, initially I did not
5 want to come. I did not want to come, but as -- as I started
6 thinking about it, you know, this is an opportunity to make --
7 right a wrong, an injustice in our society, and so I would -- I
8 would like to experience the judicial -- the jury process; and
9 now that I'm here, even more so. I have the opportunity to be
10 involved in a court proceeding such as this one. I'm more
11 motivated to be involved. So as far as that "guilty" statement
12 that I put in there, I wish I hadn't.

13 **THE COURT:** Okay. Well, you know, people say things
14 all the time so I'm -- I'm always interested in that.

15 But let me just go back one more time because you've
16 mentioned a couple of times righting a wrong, and at the moment
17 there is no wrong in this courtroom. There's an allegation
18 about it, and -- but there's no -- there's no evidence yet that
19 that did or didn't occur.

20 And it's very important that if I seat you as a juror,
21 that I have your assurance that you are going to be able to be
22 fair and unbiased and that the -- what you'll be doing is being
23 a fair and impartial juror, considering all the thoughts that
24 everybody else has about the case and the evidence, and then
25 rendering a fair verdict. Will you be able to do that?

1 **PROSPECTIVE JUROR NO. 30:** Yes, Your Honor.

2 **THE COURT:** Okay. All right. Thank you.

3 **PROSPECTIVE JUROR NO. 30:** Thank you.

4 Juror No. 31. Good morning.

5 **PROSPECTIVE JUROR NO. 31:** Good morning, Your Honor.

6 **THE COURT:** And tell me what the experience was that
7 you were referring to.

8 **PROSPECTIVE JUROR NO. 31:** So it's kind of irrelevant
9 for this situation, but my mom was a paraplegic all my life.
10 So growing up and being part of her life, she was basically
11 ignored because of that. When I was eight, people would ask me
12 questions rather than ask my mom, and I would be like lost.
13 But it's -- it wouldn't affect me in that way.

14 **THE COURT:** Okay. So you --

15 **PROSPECTIVE JUROR NO. 31:** In either way. I was just
16 answering the question.

17 **THE COURT:** Great. Okay. Thank you very much.

18 **PROSPECTIVE JUROR NO. 31:** Sure.

19 **THE COURT:** And Juror No. 33. And what was the
20 experience that you were referring to?

21 **PROSPECTIVE JUROR NO. 33:** I was just referring to
22 like an experience. My mom just moved down to South Carolina
23 about four years ago, and she was having a hard time looking
24 for jobs and stuff and, you know, the pay rate and everything
25 is, like, very different there. So just the hiring person --

1 the personnel was going to hire her and stuff, she heard the
2 person utter like, you know, this "N" word or whatever.

3 But, you know, that was my experience just hearing it. I
4 mean, I deal with it every day. I'm pretty sure a lot of us
5 do, but I was speaking more in general terms of that.

6 **THE COURT:** So -- and dealing -- and dealing with it
7 every day is -- I get it.

8 Would you be able to fairly evaluate both sides of the
9 case? Start everybody at the same place? Listen to the
10 evidence? Figure out what's true and what's not? And render a
11 fair verdict with the jury given the experiences that you have
12 had in your life?

13 **PROSPECTIVE JUROR NO. 33:** I believe so. I mean,
14 because everybody is different. So I don't take it to a whole
15 broad amount of people. It's just that person or whatever.

16 **THE COURT:** And I think that that's right. Everybody
17 is different. Every factual situation is different.

18 And the great thing about jury service is that you'll be
19 is sitting with at least, you know, five other people,
20 hopefully seven or eight, and discussing at the end of the case
21 what's real and what's not and considering their experiences as
22 well as yours and what -- what they learned through the trial
23 and trying to come to a same decision.

24 So, great. Thank you.

25 **PROSPECTIVE JUROR NO. 33:** Thank you. Appreciate it.

1 (Brief pause.)

2 **THE COURT:** So nobody needs to -- there are -- I have
3 a number of other questions that are going to touch on some of
4 the same issues that we've just discussed. And so for people
5 that have raised the issue that they had, the thing that was
6 relevant, you don't have to come back on this, but I'm
7 interested in knowing whether any of you or anyone close to you
8 have worked in human resources besides the jurors who have
9 already indicated that.

10 Juror No.s 12 and 18.

11 Okay. Has anyone -- have you or anyone close to you ever
12 brought a complaint to human resources.

13 (No response.)

14 **THE COURT:** Have any -- oh, 18. Okay. Same -- same
15 information, I take it.

16 Okay.

17 And 26. All right. Okay.

18 And has anyone here ever been accused of racial harassment
19 or discrimination?

20 Juror No. 24. Do you want to step forward, please?

21 **PROSPECTIVE JUROR NO. 24:** I was accused of sexual
22 harassment, and it wasn't racial or anything like that, but I
23 kind of put them in the same category.

24 **THE COURT:** Okay. And is there anything about the
25 way that that matter was resolved that would impact your

1 ability to sit as a fair and impartial juror here?

2 **PROSPECTIVE JUROR NO. 24:** No.

3 **THE COURT:** Okay. Thank you.

4 Besides what I've already asked, is there anyone who has
5 worked in a work environment that you felt was racially
6 hostile?

7 All right. And you've described that, Juror No. 26.

8 Anybody else?

9 (No response.)

10 **THE COURT:** Okay. Have -- besides what's already
11 been said, has anyone -- have you or anyone close to you ever
12 been accused of threatening somebody in the workplace?

13 Juror No. 12. Come -- yeah, come and tell me about that.

14 **PROSPECTIVE JUROR NO. 12:** It was my dad. He was,
15 like, sticking up -- also, when I raised my number before, it
16 was my dad who works in HR too, so not just my cousin who did.

17 **THE COURT:** Okay.

18 **PROSPECTIVE JUROR NO. 12:** But, yeah, my dad is in HR
19 for -- I don't remember the company, but one of the tech
20 companies. It's not Tesla. It doesn't have to do with SpaceX
21 or anything. And so he threatened someone at his workplace
22 when he was, like, my age-ish, and he -- because they were,
23 like, being mean to my mom and they were, like, coworkers or
24 whatever. So he threatened to snap her skinny little neck. So
25 that was, yeah, my experience.

1 **THE COURT:** Okay. Is there anything about that
2 experience that would make a difference to you --

3 **PROSPECTIVE JUROR NO. 12:** No.

4 **THE COURT:** -- in this case.

5 And with your work in HR, will that make you automatically
6 more sympathetic to any witnesses who testify from HR because
7 you know about the pressures and difficulties of the job?

8 **PROSPECTIVE JUROR NO. 12:** Not really, no. My cousin
9 was in, like, a part of HR that wasn't -- I mean, she was
10 dealing with people, but it was more so, like, turn it off,
11 then on again sort of thing. Like -- Like, tech, IT-HR stuff.

12 **THE COURT:** Okay.

13 **PROSPECTIVE JUROR NO. 12:** And then my dad was, like,
14 managing and working to write stuff for qualifications for
15 people to work at the company that he's at. So it doesn't have
16 to do with, like, a complaint against other people or anything
17 like that.

18 **THE COURT:** Okay.

19 **PROSPECTIVE JUROR NO. 12:** Yeah.

20 **THE COURT:** Okay. Great. Thank you.

21 Okay. Let me switch topics a bit. The -- has anybody
22 here ever worked for a temporary staffing company?

23 Juror No. 4, would you come to the microphone, please?

24 Good morning.

25 **PROSPECTIVE JUROR NO. 4:** Good morning.

1 **THE COURT:** So tell me -- tell me who you worked for
2 and what did you do?

3 **PROSPECTIVE JUROR NO. 4:** This was called -- this was
4 so long ago, probably at least 15 years ago, for a -- it was a
5 health staffing agency for nurses and phlebotomists in
6 San Bruno.

7 **THE COURT:** And did -- was your experience with
8 that -- what was your experience like with that company?

9 **PROSPECTIVE JUROR NO. 4:** Good experience. I was
10 just the office manager for that company.

11 **THE COURT:** Okay. Great. Thank you.
12 And who else?

13 **PROSPECTIVE JUROR NO. 7:** I misunderstood the
14 question.

15 **THE COURT:** That was Juror No. 7. That's -- it's
16 not -- it's not relevant to you.

17 **PROSPECTIVE JUROR NO. 7:** Yes.

18 **THE COURT:** Okay. Who else? Anybody else work for a
19 temporary staffing agency?

20 (No response.)

21 **THE COURT:** Has anybody worked for West Valley
22 Staffing Group, Chartwell Staffing, CitiStaff Solutions, or
23 NextSource?

24 (No response.)

25 **THE COURT:** Have any of you had a job where you were

1 making personnel decisions, such as hiring and firing?

2 Okay. So that's Jurors No. 18, 20, 23, 1, 5, 7, and your
3 number is --

4 **PROSPECTIVE JUROR NO. 31:** 31.

5 **THE COURT:** -- 31.

6 Okay. So I haven't spoken with you yet, Juror No. 1,
7 would you mind?

8 Good morning.

9 **PROSPECTIVE JUROR NO. 1:** Good morning.

10 So I work for a school district, and I often, a couple
11 times at least, have been chosen to be on a panel, an interview
12 panel, but not ultimately made the final decision.

13 **THE COURT:** Okay. And how about on the other side?
14 Have you ever been involved in any firing decisions?

15 **PROSPECTIVE JUROR NO. 1:** No.

16 **THE COURT:** Okay. Thank you.

17 And who else was there? No. 5? Would you mind?

18 This is a good way of getting your 10,000 steps in, so...

19 So tell me what your involvement is with hiring or firing.

20 **PROSPECTIVE JUROR NO. 5:** As I said, I'm a manager so
21 I hire engineers on my team and I have to let go. I have to --
22 you know, if performance is not good, I have let go one or two
23 people.

24 **THE COURT:** And so would that experience make you
25 more sympathetic at the outset to people who are in that

1 position? Will you be able to evaluate the evidence fairly?

2 **PROSPECTIVE JUROR NO. 5:** Yeah. Absolutely.

3 **THE COURT:** Okay. Thank you.

4 **PROSPECTIVE JUROR NO. 5:** Yeah.

5 **THE COURT:** Who else raised their -- Juror No. 8.
6 Would you mind stepping up to the mic?

7 Good morning.

8 **PROSPECTIVE JUROR NO. 8:** Good morning.

9 **THE COURT:** So --

10 **PROSPECTIVE JUROR NO. 8:** So --

11 **THE COURT:** Go ahead.

12 **PROSPECTIVE JUROR NO. 8:** So I'm a solo practitioner
13 CPA so I have my own firm. Of course, I do my own hiring and
14 firing over the years.

15 **THE COURT:** And will you be able to look at all of
16 the witnesses and judge their credibility fairly and treat all
17 the parties in this courtroom fairly?

18 **PROSPECTIVE JUROR NO. 8:** I can try.

19 **THE COURT:** Is there anything that makes you think
20 that you won't be able to do that?

21 **PROSPECTIVE JUROR NO. 8:** No, I don't think so.

22 **THE COURT:** Okay.

23 **PROSPECTIVE JUROR No. 8:** But there is something else
24 that I want to say, is I am facing a stressful time because
25 October 15th is my last filing deadline for the 2020 tax year,

1 and I still have a bunch to do.

2 **THE COURT:** Okay. All right. And -- so -- and
3 related to that is the fact that we're going to be going
4 basically half days from 8:30 to 1:30, so you'll be able to be
5 working at those other times, will that -- does that allay your
6 stress at all?

7 **PROSPECTIVE JUROR NO. 8:** From 2:00 o'clock until
8 12:00 o'clock?

9 **THE COURT:** And how about this being a much shorter
10 trial than the other trials that you might be called to in this
11 court?

12 **PROSPECTIVE JUROR NO. 8:** Okay. Yeah, but that's
13 still only four more weeks to go.

14 **THE COURT:** All right. Okay. Thank you very much.

15 **PROSPECTIVE JUROR NO. 8:** Thank you.

16 **THE COURT:** I appreciate it.

17 All right. Who else had their hand up? Let's see, is
18 there -- let me -- let me ask of the people whose -- the other
19 folks, is there anything about what you have done in terms of
20 your managerial responsibilities that would make you treat
21 managers in a better -- in a different and better way than
22 anybody else who was called to testify in this case?

23 (No verbal response.)

24 **THE COURT:** Okay. Everybody says "no."

25 All right. Has anyone seen anyone make a false accusation

1 of racism or harassment in the workplace?

2 (No response.)

3 **THE COURT:** Have you ever seen someone overreact or
4 get offended by a harmless or joking comment in the workplace?

5 (No response.)

6 **THE COURT:** Have you ever known someone who was
7 falsely excused of racism or discrimination?

8 (No response.)

9 **THE COURT:** Have you ever worked in a workplace where
10 coworkers often made racial jokes or trash talk with each other
11 without being offended?

12 Okay. So let's go first to -- is it No. 30? Yes. Come
13 on up.

14 **PROSPECTIVE JUROR NO. 30:** Hi, Your Honor, again.

15 Yes, where I currently work at. So I'm a nurse and -- and
16 some of my coworkers, they speak just casually to each other
17 but not to me, and I overhear them call each other the "N" word
18 and -- and I -- I don't argue with them, but I just tell them
19 that they can't say that word, especially I don't ever want to
20 hear them say it.

21 And so now when they greet each other, they don't actually
22 say the "N" word, but they say something sort of to it, but
23 they don't actually say it, as if that should offend me less,
24 and that's what I'm currently dealing with. So...

25 **THE COURT:** So there it's something that doesn't seem

1 to impact them, but it impacts you?

2 **PROSPECTIVE JUROR NO. 30:** Yes. And I made them
3 aware of it, and so I guess they're trying to change it by
4 saying something less, but I kind of -- it's still -- it's
5 still there --

6 **THE COURT:** Okay.

7 **PROSPECTIVE JUROR NO. 30:** -- and it's just -- that's
8 just something that bothers me still.

9 **THE COURT:** Sure. Sure. Thank you.

10 And Juror No. 33, did you have your hand up also?

11 **PROSPECTIVE JUROR NO. 33:** Yeah. I just wanted to
12 say that's -- that's happened at every job I ever worked. The
13 crap talk and just the "N" word. If you're Chinese, chink; you
14 know, Mexican, beanbag, whatever, it's always been around.

15 **THE COURT:** Okay. And so will you be able to -- I'm
16 going to give you instructions on the law about what severe and
17 pervasive harassment is in the workplace, what kind of
18 environment is permissible and not. Will you be able to
19 judge -- use my instructions with the evidence that you learn
20 here in order to come up with your verdict as opposed to
21 applying whatever things happened in workplaces that you've
22 been involved in before?

23 **PROSPECTIVE JUROR NO. 33:** I believe so.

24 **THE COURT:** Okay. Thank you.

25 Has anyone here seen or heard about someone playing the

1 race card in order to get special treatment?

2 Okay. Let's go to No. 30 first.

3 **PROSPECTIVE JUROR NO. 30:** So, again, I spend a lot
4 of time at work and this incident a female coworker of mine,
5 she was telling me about her experience on the freeway where
6 she was driving in a carpool lane with no license, speeding,
7 and she got pulled over and it was a white cop that pulled her
8 over. Oh, and she didn't have her registration nor insurance,
9 nothing, And she didn't get a ticket. The officer told her to
10 go home.

11 And I said to her, "Hey, do you really think that would
12 happen if a black person got pulled over and had no license,
13 speeding, no registration or anything, and in a car pool lane?
14 Do you think that a black person -- if that were to happen with
15 a black person, he would just go home freely?" And she said,
16 "Well, I guess that's a privilege."

17 And that struck me as kind of like -- it just flabbergast
18 me, basically. But I guess -- I feel like that's the world
19 we're living in and that's unfortunate.

20 **THE COURT:** Okay. Thank you.

21 And Juror No. 24.

22 **PROSPECTIVE JUROR NO. 24:** This is probably going to
23 sound trivial, but I do believe in full disclosure. And, you
24 know, we talk about the race card, you read about that in
25 politics all the time, and I just think it's inescapable. I

1 think it's ugly and all that, but it is what it is. It turns
2 me off, actually.

3 **THE COURT:** All right. Good. Thank you.

4 So the -- as you've heard, the crux -- an important part
5 of this case involves the -- includes Mr. Diaz's allegations
6 that he was called a "nigger" at Tesla with some frequency.
7 There are going to be disputes about that, the context in which
8 it was used.

9 Is there anyone who would be so affected by hearing that
10 term that they'd unable -- that they'd be unable to serve as a
11 fair and impartial juror?

12 (No response.)

13 **THE COURT:** Do lawsuits that seek money for emotional
14 distress seem frivolous or wrong or rub you the wrong way?

15 Juror No. 24, come on up.

16 **PROSPECTIVE JUROR NO. 24:** Personally I think the
17 tort system needs to be reformed. I think the courts have a
18 lot of rulings that are outsized relative to the weight of the
19 matter. People are all alone. They need to be righted, if you
20 follow what I'm saying. But I think the tort system on both
21 sides needs to be reformed; and if I were king of the world for
22 a day, I would do it, but I'm not.

23 **THE COURT:** Okay. Well, so I'm sort of king of the
24 day when it comes to the law in this case. So would you be
25 able to follow my instructions on the law, whatever they are,

1 in a fair way and evaluate them in terms of the evidence that
2 comes into the courtroom and render a verdict based on the law?

3 **PROSPECTIVE JUROR NO. 24:** I -- I can do that.

4 **THE COURT:** Okay. Great. Thank you.

5 So, ladies and gentlemen, in this case you, and I hope
6 this is coming through in the comments that I'm making, you
7 will sit as the judge of the facts. I instruct you on the law,
8 but deciding the facts is your job. The jurors are selected as
9 the sole judges of the facts. You're duty bound to follow the
10 law as I give it to you, but eventually you will apply that law
11 to the facts as you find them from the evidence that's
12 presented here.

13 It's your duty to treat all witnesses equally and not to
14 assume that someone is truthful or not truthful based on their
15 profession or looks or anything else. You can't make
16 assumptions about credibility until you hear what somebody has
17 to say, and then you can evaluate that and a whole list of
18 factors that I'll instruct you about once the trial starts.

19 Just as an example, consider testimony from a law
20 enforcement officer in a criminal case. You might have strong
21 positive or negative feelings based on your prior experience
22 with law enforcement about whether she's credible, and I'm
23 going to -- I would instruct you not to assume that she's
24 either more credible or less credible than any other human
25 being who comes into this courtroom. You need to hear what she

1 has to say and how she says it before judging credibility.

2 The responsibility of judging the facts has to be
3 performed without bias or prejudice to any party. The law
4 doesn't permit jurors to be governed by sympathy, prejudice, or
5 public opinion. The parties will expect that you'll be -- that
6 you will carefully and impartially consider all the evidence,
7 follow the law as stated by me, and reach a just verdict
8 regardless of the consequences.

9 So do you know of any reason whatsoever why you could not
10 sit with absolute impartiality of both sides as a juror in this
11 case?

12 No. 31, come on up.

13 **PROSPECTIVE JUROR NO. 31:** Can I say it privately?

14 **THE COURT:** I'm sorry? Yes.

15 So at the end of my questions, we'll probably take a break
16 and at that point anybody who wants to speak privately should
17 remain outside. Ms. Davis will come get you and bring you in
18 one at a time.

19 So, yes. Thank you.

20 So this is a civil case. The burden of proof in a civil
21 case is different than that in a criminal case. In a criminal
22 case, every essential element of the offense charged has to be
23 proved beyond a reasonable doubt. But in a civil case, a fact
24 can be established by a preponderance of the evidence; that is
25 to say, by evidence that establishes that a fact is more likely

1 true than not true. That's the difference of the required
2 proof in a criminal and a civil case.

3 Are you all prepared to follow the law as given to you by
4 me in your consideration of the evidence?

5 (Jury panel nodding affirmatively.)

6 **THE COURT:** Jurors are not -- may not express or form
7 any opinion on the merits of the case until the end of trial
8 when it's been finally submitted to them for their verdict;
9 that is to say, until they've had the benefit of the arguments
10 of counsel and the instructions of the Court.

11 If you're selected to sit on this case, will you be able
12 and willing to render a verdict based solely on the evidence
13 presented at trial and the law as I give it to you in my
14 instructions and disregard any ideas, notions, or beliefs about
15 the law that you may have encountered other than my
16 instructions when you reach a verdict?

17 (No response.)

18 **THE COURT:** One of the instructions I'll give you is
19 that you should not discuss the case with anyone until your
20 jury service is concluded. Does anybody here have any problems
21 with keeping things confidential?

22 (No response.)

23 **THE COURT:** As I said earlier, this case is going to
24 take six or seven days, not including the time it takes to
25 deliberate. I recognize that service on the jury is

1 inconvenient for everybody because it requires you to do
2 something other than what you would ordinarily be doing and it
3 interferes with a number of your plans; but, as I said before,
4 our system of justice depends on everyone's willingness to
5 serve.

6 That said, does anyone have any special disability or
7 problem that would make serving as a member of this jury
8 difficult or impossible?

9 All right. What I will do is ask each of you to wait
10 until the break and then come in one at a time and we can
11 discuss your issues.

12 If you were one of the parties in this case, do you know
13 of any reason, other than anything you may have said so far,
14 why you would not be content to have the case tried by someone
15 with your frame of mind?

16 (No response.)

17 **THE COURT:** Can anybody think of any other matter
18 besides what you may tell us privately that may have some
19 bearing on your qualifications as a juror or that may prevent
20 your rendering a fair and impartial verdict based solely on the
21 evidence and on my instructions?

22 (No response.)

23 **THE COURT:** All right. So those are the questions
24 that I have. Why don't we take a 15-minute break, and let me
25 tell you what you can and can't do while you're on the break,

1 and then we'll come back.

2 It's very important that you come back to the same seat
3 that you're in. That's a matter of courtesy and respect for
4 other people. We need to get you back on time.

5 While we're on -- while you're on the break, please don't
6 discuss the subject matter of the case, the questionnaire, or
7 the proceedings today with anybody. Don't do any research
8 about it. Don't communicate with anything -- anybody about it
9 by phone, text, social media. Don't post anything about it
10 anywhere. If you see the lawyers or anyone connected with the
11 case, don't speak to them. That seems rude, but that's -- but
12 that's the order. Don't speak to them.

13 If you're selected as a juror, I have a very long
14 instruction for you that's related to this; but for now, don't
15 communicate with anybody, including your fellow jurors, about
16 this case in any way and if you hear others communicating about
17 it, walk away from them and then let Ms. Davis know.

18 If this instruction is disregarded, I may have to start
19 this all over again. So these rules protect everybody and
20 ensure that the verdict that's rendered in the case is based
21 solely on what the parties bring out here in court. It assures
22 the appearance and the reality of absolute impartiality. This
23 is what the parties and the Court expect of you.

24 So we are -- we'll now be on break until 11:30. I will
25 tell you that on the second floor there's a cafeteria, and it's

1 a place that I frequent from time to time and the food is
2 reasonable and reasonably priced, but I want you to be back
3 here at 11:30.

4 And anybody who wants to speak privately to me may do so,
5 but I'd like you to wait outside and then Ms. Davis will come
6 and get you in just a second.

7 All right. Thank you.

8 (Jury exits the courtroom at 11:08 a.m.)

9 **THE COURT:** All right. Everybody can be seated.

10 And, Ms. Davis, why don't you go and get the -- get the
11 first...

12 (Pause in proceedings.)

13 **THE COURT:** All right. Juror No. 31.

14 **PROSPECTIVE JUROR NO. 31:** Hello.

15 **THE COURT:** Hi. What can I do for you?

16 **PROSPECTIVE JUROR NO. 31:** Well, I've been party to a
17 lawsuit that went on for, like, four years and just finished
18 two weeks ago; and no offense, but I have a very low opinion of
19 attorneys. I mean, rock bottom.

20 **THE COURT:** Uh-huh. Well, so some of my best friends
21 are lawyers, I just have to tell you.

22 But the -- there are lawyers on both sides in this case
23 so -- so does that make you think that -- that you couldn't
24 be -- you couldn't sift through the information that you're
25 getting?

1 The lawyers will always present their client's best case,
2 and it's your job to understand what happens up here in the
3 witness stand and be credible -- and judge credibility. Do you
4 think you'd be able to do that?

5 **PROSPECTIVE JUROR NO. 31:** I just got -- to be
6 honest, I'm not trying to get out of jury duty, but just being
7 in terms of doing it. You've got to remember, three to four
8 years of your life is a lot of time. I was directly involved
9 and I dealt with, like, a lot of inaccurate information that we
10 could prove was inaccurate; and even though they kept doing it,
11 they never got in trouble for giving inaccurate information.
12 They just said, "Oh, it's not right." And just two weeks after
13 four years is not much of a gap.

14 **THE COURT:** Okay.

15 **PROSPECTIVE JUROR NO. 31:** I can tell just how
16 frustrated I was being in here. It's really odd. I didn't
17 expect this.

18 **THE COURT:** Okay. All right. Well, I appreciate
19 that. Thank you for letting me know.

20 **PROSPECTIVE JUROR NO. 31:** Okay.

21 (Pause in proceedings.)

22 **THE COURT:** Juror No. 18.

23 **PROSPECTIVE JUROR NO. 18:** Yes. Sorry for the
24 inconvenience.

25 Can you repeat for me the time frame that you mentioned

1 that's expected?

2 **THE COURT:** Yes. So I expect that the closing
3 arguments will occur no later than a week from Monday, and then
4 the jury will deliberate. So it would be -- I would be -- I
5 would be quite certain that by two weeks from today the case
6 will be complete.

7 **PROSPECTIVE JUROR NO. 18:** Okay. I think the other
8 thing that was on my mind was some of the questions that people
9 were responding to, I didn't think were on my questionnaire.

10 **THE COURT:** That's true. You got the same -- I
11 assure you, you got the same questionnaire that everybody else
12 did. So that -- so what I did was I read the questionnaire. I
13 have a number of questions that I ask in every case, and
14 then -- then there's some other questions that are more
15 specific to the case that I wanted to ask. So everybody -- you
16 got the same thing as everybody else.

17 **PROSPECTIVE JUROR NO. 18:** Fair enough. I just was a
18 little concerned.

19 **THE COURT:** Yeah.

20 **PROSPECTIVE JUROR NO. 18:** So -- but thank you for --
21 for clarifying that for me.

22 **THE COURT:** Okay. Thank you.

23 **PROSPECTIVE JUROR NO. 18:** The timeline is a little
24 bit tough because we're fiscal yearend. The half days might
25 help, but they only -- my employer will only subsidize about

1 five days including today. So that might be really hard for me
2 financially at a point --

3 **THE COURT:** Okay.

4 **PROSPECTIVE JUROR NO. 18:** -- due to other
5 circumstances right now, like my whole house is ripped apart.
6 So I appreciate you repeating the time frame for me.

7 **THE COURT:** Okay. Thank you very much.

8 (Pause in proceedings.)

9 **THE COURT:** Remind me your juror number.

10 **PROSPECTIVE JUROR NO. 11:** 11.

11 **THE COURT:** 11. Okay, go ahead.

12 **PROSPECTIVE JUROR NO. 11:** I just want to say that
13 it's close to midterms, and I have a lot of tests coming up and
14 most of my classes are based on participation so it just would
15 be really hard for me to serve on the jury.

16 **THE COURT:** Where are you going to school?

17 **PROSPECTIVE JUROR NO. 11:** S.F. State.

18 **THE COURT:** And what year are you?

19 **PROSPECTIVE JUROR NO. 11:** This is my third year.

20 **THE COURT:** And did you also say that you've got two
21 jobs?

22 **PROSPECTIVE JUROR NO. 11:** Yeah.

23 **THE COURT:** And what do you do at them?

24 **PROSPECTIVE JUROR NO. 11:** I work at the bookstore at
25 my school and the gym at my school.

1 **THE COURT:** Okay. Thank you.

2 (Pause in proceedings.)

3 **THE COURT:** Come on up to the mic.

4 What is your jury number?

5 **PROSPECTIVE JUROR NO. 25:** 25.

6 **THE COURT:** Okay.

7 **PROSPECTIVE JUROR NO. 25:** I actually wasn't even
8 sure this was the appropriate time to do it, but I was -- I
9 submitted a request for excusal, and I was denied and then I
10 submitted a request for postponement. I thought that would
11 make more sense. But it was a little bit too close to trial,
12 so I was just trying to do the right thing, show up today.

13 My wife is the primary income earner. I spend most of my
14 time with my two-year-old son during the week. So really being
15 here for a week is asking her to take a week off of work. So I
16 just wanted to request a hardship for the week, maybe even just
17 postponement at a minimum.

18 **THE COURT:** Do you have any -- do you have any family
19 in the area or friends who would be able to help out in the
20 short term?

21 **PROSPECTIVE JUROR NO. 25:** Scrambling this last
22 minute for a week, no. No, unfortunately.

23 **THE COURT:** Okay. Thank you.

24 **PROSPECTIVE JUROR NO. 25:** Thank you.

25 (Pause in proceedings.)

1 **THE COURT:** Hello. Remind me what juror number you
2 are.

3 **PROSPECTIVE JUROR NO. 13:** 13.

4 **THE COURT:** Which number?

5 **PROSPECTIVE JUROR NO. 13:** No. 13.

6 **THE COURT:** No. 13. Okay.

7 **PROSPECTIVE JUROR NO. 13:** Yeah. I've been going
8 through some health issues this -- this year. I've been
9 diagnosed with diverticulitis two -- after about two days. And
10 during July my gall bladder got removed, and right now I am
11 facing sleep apnea. I sleep less at night and during daytime I
12 make up. After lunch, I sleep for two hours. So that's what
13 I'm wondering with my health.

14 **THE COURT:** Right. And so with the sleep apnea -- I
15 didn't hear everything that's going on because my hearing, but
16 with the sleeping, this trial day is 8:30 to 1:30.

17 **PROSPECTIVE JUROR NO. 13:** 8:30 to 1:30, so it would
18 be okay, I think. I usually sleep after lunch.

19 **THE COURT:** After lunch. So that would be okay then?

20 **PROSPECTIVE JUROR NO. 13:** Yes.

21 **THE COURT:** Okay. And are you -- I mean, are you
22 alert now? You seem like you're following everything that's
23 going on.

24 **PROSPECTIVE JUROR NO. 13:** Yeah.

25 **THE COURT:** Yeah, okay.

1 All right. And -- okay. Thank you. I appreciate it.

2 **PROSPECTIVE JUROR NO. 13:** Thank you.

3 (Pause in proceedings.)

4 **THE COURT:** Good morning.

5 **PROSPECTIVE JUROR NO. 9:** Hi. I'm Juror No. 9.

6 **THE COURT:** Okay.

7 **PROSPECTIVE JUROR NO. 9:** I have a medical issue
8 where I have a doctor's note from a fall at work. So I need to
9 sit and stand as needed. Your hours seem like I could make it
10 work, but I do have a brace on so --

11 **THE COURT:** Well, so the -- you are welcome to
12 stand -- in this court you can stand at any time you want. I
13 take breaks every hour and a half so you can walk around and do
14 that. Do you think you would be able to --

15 **PROSPECTIVE JUROR NO. 9:** As long as there's
16 flexibility, for sure, yeah. I was just wondering. I was
17 hoping that that was an option. So if that's in place,
18 that's -- that's fine.

19 **THE COURT:** Yeah. Okay.

20 **PROSPECTIVE JUROR NO. 9:** I just need to do it when I
21 need to do it if that's not going to, you know, do anything to
22 the --

23 **THE COURT:** Yeah, no. That's perfectly fine.

24 **PROSPECTIVE JUROR NO. 9:** Okay.

25 **THE COURT:** Great. Okay. Thank you.

1 (Pause in proceedings.)

2 **THE COURT:** Remind me your jury number again.

3 **PROSPECTIVE JUROR NO. 7:** No. 7.

4 **THE COURT:** No. 7, yes.

5 **PROSPECTIVE JUROR NO. 7:** So, you know, when you
6 asked if there was something that would make it difficult for
7 me to serve, it's just -- just the fact I have two young
8 children that go to school -- to a school that is outside of
9 our district. And, you know, my wife has a full-time job, and
10 we kind of work it out so where she has to take time -- time
11 away from work to go pick him from home and bring him to school
12 and I come in early enough to go and pick him up after school.

13 That will -- that's what would make it difficult, but --
14 and I also wanted to mention that three weeks ago I served jury
15 duty in Sonoma County, and I would have excused myself except I
16 kind of missed -- missed that so I just wanted to mention that.

17 **THE COURT:** So you just served on a jury three weeks
18 ago?

19 **PROSPECTIVE JUROR NO. 7:** Yes, in Sonoma County.

20 **THE COURT:** Congratulations. Not everybody gets
21 called twice in a month.

22 **PROSPECTIVE JUROR NO. 7:** I got called at the same
23 time; but when I look at the -- it says if you have served in
24 the past 12 months, that was before I actually went and did
25 that, so I just kind of like, you know, kind of forgot --

1 forgot about it. I was like, "Huh, I could have just done
2 that," you know, but I missed that so...

3 **THE COURT:** Well, I think you get an automatic
4 excusal for the service that you've already did. And next time
5 if they both come at the same time, federal court is so much
6 more important than state court.

7 **PROSPECTIVE JUROR NO. 7:** Right.

8 **THE COURT:** But if you served three weeks ago, I will
9 excuse you now.

10 **PROSPECTIVE JUROR NO. 7:** Okay.

11 **THE COURT:** So thank you very much for your service
12 in Sonoma --

13 **PROSPECTIVE JUROR NO. 7:** Well, thank you.

14 **THE COURT:** -- and here. I appreciate it.

15 **PROSPECTIVE JUROR NO. 7:** Thank you. So I can go?

16 **THE COURT:** You can go.

17 **PROSPECTIVE JUROR NO. 7:** Okay. Thank you.

18 (Pause in proceedings.)

19 **THE COURT:** Okay. So, Mr. Alexander, it's going to
20 come to you for voir dire when we come back.

21 **MR. ALEXANDER:** Thank you, Your Honor.

22 I wanted to raise one issue.

23 **THE COURT:** Okay.

24 **MR. ALEXANDER:** With regard to the individuals that
25 indicated that they have stock interests, there is actual

1 authority that says that that stock interest alone makes them
2 biased, and I think that would apply as to 8 and 15.

3 **MR. ORGAN:** 20.

4 **MR. ALEXANDER:** 8 and 20. I'm sorry.

5 And the case that addresses that is, I believe, *Getter* --
6 G-E-T-T-E-R -- vs. *Wal-Mart Stores*, 66 F.3d 1119 at 1120. It's
7 a Sixth Circuit case from 1995. So I believe I want to bring
8 it to your attention now as you're considering the hardships
9 because I think that those individuals would be off the
10 panel --

11 **THE COURT:** They may be.

12 **MR. ALEXANDER:** -- for cause.

13 **THE COURT:** Okay. Well, so I'd like -- I'll be
14 interested in hearing from Ms. Kennedy, and I'll take a look at
15 that also once we're done with the voir dire.

16 So what I'm -- what I'm planning to do is letting you go
17 take care of whatever you need to take care of, and then turn
18 it over to you, Mr. Alexander, for about 15 minutes and then to
19 Ms. Kennedy for about 15 minutes, and then we'll take another
20 break and discuss cause and hardship and move on. So we're
21 doing fine.

22 All right. Thank you. So we'll be back at -- come back
23 at 11:30 or as quickly thereafter as possible.

24 (Whereupon there was a recess in the proceedings

25 from 11:22 a.m. until 11:36 a.m.)

1 **THE COURT:** All right. So now the lawyers have the
2 opportunity to ask some questions as well.

3 Mr. Alexander, will you be taking the lead?

4 **MR. ALEXANDER:** Yes, Your Honor. Thank you.

5 Good morning. I'm just going to have a few questions for
6 all of you. If anyone can't hear me in the back, I'll speak
7 louder without yelling.

8 First, by a show of hands, is there anyone that does not
9 believe that emotional distress exists? Is there a show of
10 hands?

11 (No response.)

12 **MR. ALEXANDER:** I don't see any hands.

13 Is there anyone that feels that you cannot suffer
14 emotional distress as a result of things that occur inside your
15 workplace? Is there anyone here that feels that?

16 (No response.)

17 **MR. ALEXANDER:** No show of hands. I see no one.

18 Is there anyone here who would not be willing to award
19 damages for emotional distress regardless of what we say in
20 terms of meeting our burden of proof? Is there anyone here who
21 would not be willing to award emotional distress damages?

22 (No response.)

23 **MR. ALEXANDER:** I don't see any hands. Thank you.

24 **MR. ORGAN:** There was --

25 **MR. ALEXANDER:** I'm sorry?

1 So I see your hand. I don't remember your number. If you
2 could come forward.

3 **PROSPECTIVE JUROR NO. 24:** 24.

4 **MR. ALEXANDER:** No. 24.

5 **PROSPECTIVE JUROR NO. 24:** I think I can award
6 emotional distress, but I'd have to think very hard about the
7 amount of judgment. As I said earlier, I've got a belief in
8 the way the court system works, the way the judgments work; and
9 so I could do it, but it's going to take a lot in me to come
10 out with an amount.

11 **MR. ALEXANDER:** And I had forgotten. And so if
12 you -- if you were king of the world for a day, what you would
13 do is adjust emotional distress --

14 **PROSPECTIVE JUROR NO. 24:** Say that again, please.

15 **MR. ALEXANDER:** If you were king of the world for a
16 day, what you would do is make some adjustments so that
17 emotional distress damages could not be awarded?

18 **PROSPECTIVE JUROR NO. 24:** I'd have to look at it
19 very closely. I would look at the facts very closely, but
20 outsized judgments, that doesn't really work for me.

21 **MR. ALEXANDER:** Thank you very much.

22 Are there any fans of Elon Musk? There are some people
23 that had opinions, but are there any fans of Elon Musk?

24 (No response.)

25 **MR. ALEXANDER:** How about companies that are run by

1 or owned by Elon Musk?

2 (No response.)

3 **MR. ALEXANDER:** Does anyone work at a company that
4 does business with an Elon Musk company?

5 **PROSPECTIVE JUROR NO. 18:** In the past.

6 **MR. ALEXANDER:** Thank you very much. I remember your
7 response. You're number?

8 **PROSPECTIVE JUROR NO. 18:** 18.

9 **MR. ALEXANDER:** No. 18. Thank you very much.

10 Are there any -- is there anyone that works at a company
11 that uses subcontractors to do work?

12 Sorry. I see a hand from No. 1 and -- my goodness, No. 1,
13 20, 18, 24, and 23.

14 **THE COURT:** And 26.

15 **MS. NUNLEY:** 26 as well.

16 **MR. ALEXANDER:** With regard to those individuals
17 whose hands were raised, can you tell me, can you keep -- if
18 you could raise your hands now and put your hand down if you do
19 not give direction to those individuals? In other words, if
20 you -- if you give direction to those individuals, leave your
21 hands up.

22 Juror No. 1?

23 **PROSPECTIVE JUROR NO. 1:** May I ask a clarifying
24 question?

25 **MR. ALEXANDER:** Sure.

1 **PROSPECTIVE JUROR NO. 1:** So not currently, but if we
2 were to hire one, it may be someone that's placed -- like, I
3 might have.

4 **MR. ALEXANDER:** So when your company hires
5 individuals as independent contractors?

6 **PROSPECTIVE JUROR NO. 1:** Yes.

7 **MR. ALEXANDER:** And what type of direction do you
8 give?

9 **PROSPECTIVE JUROR NO. 1:** So I'm an occupational
10 therapist, and oftentimes we have shortages with OT or speech
11 therapy or psychologists; and if it's an OT need, it might be
12 someone that if it's an assistant, they might work under my
13 license. But that's not currently happening.

14 **MR. ALEXANDER:** All right. Thank you very much.

15 There are some of you that raised your hand that we have
16 heard from, and so I -- I may not ask you questions and please
17 don't be offended by that.

18 No. 24 -- not 24. No. 23, did you -- I believe you raised
19 your hand?

20 **PROSPECTIVE JUROR NO. 23:** No.

21 **MR. ALEXANDER:** I lost track. The people that raised
22 their hand with regard to individual contractor, would you
23 raise your hand again?

24 No. 20. Thank you very much.

25 **PROSPECTIVE JUROR NO. 20:** Good morning.

1 **MR. ALEXANDER:** With regard to your company, you use
2 independent contractors?

3 **PROSPECTIVE JUROR NO. 20:** Used to use independent
4 contractor, but I use a lot of the contractor through the
5 staffing companies.

6 **MR. ALEXANDER:** Through staffing companies?

7 **PROSPECTIVE JUROR NO. 20:** Yes.

8 **MR. ALEXANDER:** And how often does that occur?

9 **PROSPECTIVE JUROR NO. 20:** How often?

10 **MR. ALEXANDER:** Yes.

11 **PROSPECTIVE JUROR NO. 20:** It's about half of my team
12 are full-time employee. The other half are, like, contractors
13 through staffing company.

14 **MR. ALEXANDER:** And so with regard to the people that
15 are contract employees working for the staffing company, are
16 they subject to the same rules as the people that work directly
17 for you?

18 **PROSPECTIVE JUROR NO. 20:** Can you repeat the last
19 part of your question?

20 **MR. ORGAN:** The people that work at the staffing
21 company, are they subject to the same rules as the people that
22 work directly for you?

23 **PROSPECTIVE JUROR NO. 20:** In general, yes.

24 **MR. ALEXANDER:** Thank you very much.

25 Is there anyone whose company uses staffing employees that

1 are subject to different rules than the rules that apply to
2 your direct employees?

3 Thank you. If you could come forward.

4 Good morning. Could you remind me of your number.

5 **PROSPECTIVE JUROR NO. 23:** 23.

6 **MR. ALEXANDER:** And so your company uses staffing
7 employees?

8 **PROSPECTIVE JUROR NO. 23:** They do. And for the
9 contractors and subcontractors outside of U.S., they have
10 different guidelines and policies for them.

11 **MR. ALEXANDER:** And do you supply the policies for
12 those people that are from the staffing companies?

13 **PROSPECTIVE JUROR NO. 23:** Sorry? Say that again?

14 **MR. ALEXANDER:** You said that there are different
15 policies that apply to the contract employees through the
16 staffing companies. Do you supply those staffing employees
17 with the rules?

18 **PROSPECTIVE JUROR NO. 23:** Yes.

19 **MR. ALEXANDER:** All right. So you don't rely on the
20 staffing company to do that?

21 **PROSPECTIVE JUROR NO. 23:** I think it's -- it's done
22 by both.

23 **MR. ALEXANDER:** And with regard to staffing contract
24 employees through the staffing companies, if there's any issue
25 with regard to those staffing employees, do you handle it

1 directly or leave it to the staffing company to handle?

2 **PROSPECTIVE JUROR NO. 23:** I haven't run into that
3 situation so I'm not aware of what they do.

4 **MR. ALEXANDER:** All right. Thank you very much.

5 Let me -- I'd like to talk to some people that I have not
6 heard from.

7 Juror No. 6, if you could -- if I could speak with you for
8 a couple minutes.

9 How are you doing this morning?

10 Question for you. With regard to our judicial system as
11 opposed to the judicial system from Myanmar -- is that where
12 you were from originally?

13 **PROSPECTIVE JUROR NO. 6:** Yes.

14 **MR. ALEXANDER:** How do you feel about our jury system
15 in terms of jurors coming in, making a decision about the facts
16 in the case, and then awarding damages under circumstances
17 where someone has met their burden of proof?

18 **PROSPECTIVE JUROR NO. 6:** I think it's a fair system.

19 **MR. ALEXANDER:** I'm sorry?

20 **PROSPECTIVE JUROR NO. 6:** Very fair.

21 I don't understand your question.

22 **THE COURT:** "Very fair" is what he said. A very fair
23 system is what he said. A very fair system was what he said.

24 **MR. ALEXANDER:** Thank you. I'm having problems
25 hearing. Thank you very much.

1 And in terms of -- in terms of emotional distress, do you
2 feel that emotional distress is something that you would be
3 willing to award damages for?

4 PROSPECTIVE JUROR NO. 6: Yes.

5 MR. ALEXANDER: Yes?

6 PROSPECTIVE JUROR NO. 6: Yes.

7 MR. ALEXANDER: I'm going to ask you a question about
8 punitive damages so I can ask a question generally to other
9 people.

10 If a company were to make a conscious decision to break
11 the law or to disregard the law or to lie about breaking the
12 law, would you be willing to award punitive damages, damages to
13 punish, under those circumstances?

14 PROSPECTIVE JUROR NO. 6: Yes, I would.

15 MR. ALEXANDER: Yes, you would?

16 PROSPECTIVE JUROR NO. 6: Yes.

17 MR. ALEXANDER: Thank you very much.

18 A question to everyone. Same question. Is there anyone
19 here who under circumstances where we met our burden of proof
20 an employer had made a decision to break the law or disregard
21 the law or didn't -- didn't follow the law as they should, is
22 there anyone here who, for whatever reason, would not be
23 willing to award punitive damages?

24 If you could come up, I'd appreciate that. That is Juror
25 No. 5?

1 PROSPECTIVE JUROR NO. 5: Yes.

2 MR. ALEXANDER: With regard to punitive damages, do
3 you have any -- you said you had a follow-up question. Go
4 ahead.

5 PROSPECTIVE JUROR NO. 5: Yeah. I would -- I would
6 award punitive damage, but where would that money go is the
7 question?

8 MR. ALEXANDER: Well, the judge will give you an
9 instruction with regard to how punitive damages work. And my
10 issue was really to find out, do you have anything personally
11 that would cause you to feel that you could not award punitive
12 damages even if the judge were to give you an instruction
13 saying that we're entitled to under the right circumstances.

14 PROSPECTIVE JUROR NO. 5: I understand the question
15 very well. My question is, like, two things here. There are
16 two -- two parties here. One party is suffered and we award
17 damages for that party. Then the other party we need to award
18 a punitive damage, and I want to -- I do want to award the
19 punitive damage or -- but where does that -- what is that --
20 what are those damages and how will it be used?

21 Because this person has been compensated. This party has
22 been compensated. This needs to be punished and how do we
23 punish it? And where -- if it's going to be a financial one,
24 where does it go? Because this person has been satisfied;
25 right? That's the question I have. How does this thing work?

1 **MR. ALEXANDER:** If you were picked on the jury, we
2 will give that information as part of the process. Thank you.

3 Is there anyone who believes that the workplace or society
4 in general has become politically correct; meaning there are
5 just things you can't say for being politically correct?
6 Anyone feel that?

7 Thank you very much. I've heard from you.

8 Thank you very much. I've heard from you.

9 Juror No. 19, could I talk to you for a moment, please?
10 How are you doing this morning?

11 **PROSPECTIVE JUROR NO. 19:** Good. How are you?

12 **MR. ALEXANDER:** Is there anything about the
13 litigation that you've been involved in, being in deposition or
14 what-have-you, that would cause you to have a bad feeling or
15 not want to participate in this litigation as a juror?

16 **PROSPECTIVE JUROR NO. 19:** No. It was completely
17 unrelated. Basic depositions we have to do frequently.

18 **MR. ALEXANDER:** Is there anything about awarding
19 damages for emotional distress that would cause you not to want
20 to be a juror in this case?

21 **PROSPECTIVE JUROR NO. 19:** No.

22 **MR. ALEXANDER:** Anything about awarding punitive
23 damages that would cause you not to want to be a juror in this
24 case?

25 **PROSPECTIVE JUROR NO. 19:** No.

1 **MR. ALEXANDER:** Okay. Inside of your workplace, have
2 you ever seen or experienced discrimination occurring?

3 **PROSPECTIVE JUROR NO. 19:** No.

4 **MR. ALEXANDER:** Given that you haven't seen or
5 experienced it, do you believe that discrimination still occurs
6 inside the workplace?

7 **PROSPECTIVE JUROR NO. 19:** I'm sure it does.

8 **MR. ALEXANDER:** You're sure it does. Thank you.
9 Thank you very much.

10 **PROSPECTIVE JUROR NO. 19:** Okay.

11 **MR. ALEXANDER:** There are a number of people that
12 have said they did -- have experienced discrimination; but for
13 those of you who have not either experienced it or seen it, is
14 there anyone here that does not believe that discrimination
15 still occurs inside the workplace? If I could see a show of
16 hands.

17 (No response.)

18 **MR. ALEXANDER:** Thank you.

19 Juror No. 4, if I could speak with you for a moment.

20 If I recall correctly, and I -- you have been an office
21 manager?

22 **PROSPECTIVE JUROR NO. 4:** Yes.

23 **MR. ALEXANDER:** And have you often had the experience
24 of hiring and firing individuals?

25 **PROSPECTIVE JUROR NO. 4:** No.

1 **MR. ALEXANDER:** And do you have any responsibility
2 with regard to addressing human resource matters?

3 **PROSPECTIVE JUROR NO. 4:** No.

4 **MR. ALEXANDER:** Have you ever conducted a workplace
5 investigation?

6 **PROSPECTIVE JUROR NO. 4:** No.

7 **MR. ALEXANDER:** Inside of your employer, is there
8 someone that has that human resource responsibility?

9 **PROSPECTIVE JUROR NO. 4:** Yes.

10 **MR. ALEXANDER:** And have you ever had experiences
11 with your human resource department?

12 **PROSPECTIVE JUROR NO. 4:** No.

13 **MR. ALEXANDER:** Any experiences at work where you
14 were dissatisfied with the way you were treated at work by
15 management?

16 **PROSPECTIVE JUROR NO. 4:** Umm, yeah, I guess in the
17 form of favoritism.

18 **MR. ALEXANDER:** Favoritism. Against you? Favoritism
19 of others?

20 **PROSPECTIVE JUROR NO. 4:** Both.

21 **MR. ALEXANDER:** And on that occasion, did you take
22 any action? Did you do anything?

23 **PROSPECTIVE JUROR NO. 4:** No.

24 **MR. ALEXANDER:** Are there --

25 **PROSPECTIVE JUROR NO. 4:** Just talking to other

1 managers about it, but that's it.

2 **MR. ALEXANDER:** So you've never had occasion to have
3 interaction with human resources to address a problem that
4 you've had?

5 **PROSPECTIVE JUROR NO. 4:** No.

6 **MR. ALEXANDER:** In your role as a manager, have you
7 had any individuals that have spoken to you, come to you to
8 seek you out to -- for assistance?

9 **PROSPECTIVE JUROR NO. 4:** No. I'm not a people
10 manager and wasn't a people manager, so different type of
11 manager.

12 **MR. ALEXANDER:** With regard to emotional distress, is
13 that something that you'd feel comfortable awarding?

14 **PROSPECTIVE JUROR NO. 4:** Uh-huh.

15 **MR. ALEXANDER:** Yes?

16 **PROSPECTIVE JUROR NO. 4:** Yes.

17 **MR. ALEXANDER:** Okay. Thank you very much.

18 (Discussion held off the record between plaintiffs'
19 counsel.)

20 **THE COURT:** I'm just making sure. You're just about
21 to finish; is that right?

22 **MR. ALEXANDER:** I'm just about to finish.

23 **THE COURT:** Okay. Go ahead.

24 **MR. ALEXANDER:** Thank you, Your Honor.

25 Juror No. 13, good morning.

1 **PROSPECTIVE JUROR NO. 13:** Good morning.

2 **MR. ALEXANDER:** Just to be sure, do you have -- with
3 regard to emotional distress, is that something you feel that
4 you could award damages for if we were to meet our burden of
5 proof?

6 **PROSPECTIVE JUROR NO. 13:** Can you repeat?

7 **MR. ALEXANDER:** Let me ask the question simpler.
8 Do you believe that emotional distress is real?

9 **PROSPECTIVE JUROR NO. 13:** Yes.

10 **MR. ALEXANDER:** And could you award damages for it if
11 we meet our burden of proof?

12 **PROSPECTIVE JUROR NO. 13:** Yes.

13 **MR. ALEXANDER:** Okay. And do you have any feelings
14 about punitive damages? Is that something that you could award
15 if we met our burden of proof that the defendant in this case
16 had did things purposely against the law?

17 **PROSPECTIVE JUROR NO. 13:** Yes.

18 **MR. ALEXANDER:** Okay. Is there anything about this
19 case that would cause you to believe that you could not be fair
20 and impartial to both sides?

21 (No response.)

22 **MR. ALEXANDER:** Is there anything about this case
23 that would cause you to think that you might favor one side
24 over the other?

25 **PROSPECTIVE JUROR NO. 13:** No.

1 **MR. ALEXANDER:** All right. Thank you very much.

2 **PROSPECTIVE JUROR NO. 13:** Yeah.

3 **MR. ALEXANDER:** Thank you, Your Honor.

4 **THE COURT:** Thank you, Mr. Alexander.

5 Ms. Kennedy?

6 **MS. KENNEDY:** Good morning still. I have a few
7 follow-up questions. I'm going to ask a few general questions.
8 If could you just raise your hand, and I will follow up.

9 One of the first questions I want to ask since we are here
10 and I'm representing the defendant, does anyone have a problem
11 with the fact that the defendant Tesla has to go last; in other
12 words, we have to present our evidence second? Does anyone
13 have a problem with that concept? In other words, the
14 plaintiff gets to go first, present his case, and then Tesla
15 has to go last. Does anyone have a problem with that.

16 (No response.)

17 **MS. KENNEDY:** Is anyone here knowing that sort of how
18 this works, are they unable to sort of wait until all the
19 evidence is submitted to make a decision?

20 (No response.)

21 **MS. KENNEDY:** Given what you've heard so far from
22 Judge Orrick and just the questions from other jurors, how many
23 people of you have made up your mind as to what happened
24 already?

25 (No response.)

1 **MS. KENNEDY:** Does anyone here think they know what
2 the facts are?

3 (No response.)

4 **MS. KENNEDY:** Let me ask Juror No. -- No. 30,
5 Mr. Naylor.

6 In the questionnaire -- I believe you answered a question
7 in response to Judge Orrick's questioning that you felt that
8 you had an opportunity to make a right wrong. Do you -- is --
9 my question to you is: Do you feel that's your role as a
10 juror?

11 **PROSPECTIVE JUROR NO. 30:** I believe the judge
12 clarified it when he said that there is -- have been no right
13 or wrong established right now, and I'm comfortable with that.

14 **MS. KENNEDY:** I'm sorry. I did not understand you.

15 **PROSPECTIVE JUROR NO. 30:** I believe there hasn't
16 been a right or wrong established right now, and so I'm
17 comfortable with that.

18 **MS. KENNEDY:** I understand that, but my question was
19 a little different. Do you feel like your role as a juror is
20 to right a wrong?

21 **PROSPECTIVE JUROR NO. 30:** That's part of the justice
22 system.

23 **MS. KENNEDY:** I'm sorry?

24 **PROSPECTIVE JUROR NO. 30:** That's part of the justice
25 system. Not my decision to make.

1 **MS. KENNEDY:** Okay. As a juror, do you feel that you
2 can wait until all the evidence is in before you make a
3 decision?

4 **PROSPECTIVE JUROR NO. 30:** Yes.

5 **MS. KENNEDY:** And in this particular case, if you
6 were sitting on this side of the table representing Tesla, do
7 you think you are the right -- you are a juror that Tesla would
8 pick?

9 **PROSPECTIVE JUROR NO. 30:** I would hope so.

10 **MS. KENNEDY:** And why is that?

11 **PROSPECTIVE JUROR NO. 30:** Because I try -- I plan to
12 be pretty impartial and fair-sided.

13 **MS. KENNEDY:** Do you think you can be a fair and
14 impartial juror despite everything that you've heard?

15 **PROSPECTIVE JUROR NO. 30:** Yes.

16 **MS. KENNEDY:** All right. Thank you, Mr. Naylor.

17 In this particular matter you're going to be hearing some
18 testimony about events that happened in a workplace at the
19 Tesla facility in Fremont. My first question is: Has anyone
20 actually been out to that Tesla Fremont facility for any
21 reason?

22 Yes, Juror No. is it 23? Yes. And I know you have some
23 family that used to work there. Is that what it's in relation
24 to?

25 **PROSPECTIVE JUROR NO. 23:** (Nods head.)

1 **MS. KENNEDY:** Any other reason that you've been out
2 to that facility?

3 **PROSPECTIVE JUROR NO. 23:** (Shakes head.)

4 **MS. KENNEDY:** Yes, Juror No. 30 -- oh, sorry.
5 No. 33? Yes?

6 **THE OFFICIAL REPORTER:** I'm sorry, Your Honor. I
7 can't hear him.

8 **THE COURT:** You need to come to the mic. I'm sorry.

9 **PROSPECTIVE JUROR NO. 33:** Yes. I've been there just
10 because I got hired by them before. So -- but I didn't take
11 the job. So I've been to the facility, that's it.

12 **MS. KENNEDY:** I'm sorry. I --

13 **PROSPECTIVE JUROR NO. 33:** I said I've been hired by
14 them before, but I wound up not taking the job, but I've been
15 to the facility before.

16 **MS. KENNEDY:** Were you actually hired by Tesla or
17 were you hired by a staffing agency and placed there?

18 **PROSPECTIVE JUROR NO. 33:** It was Tesla.

19 **MS. KENNEDY:** Do you recall what staffing agency that
20 was?

21 **PROSPECTIVE JUROR No. 33:** I don't.

22 **MS. KENNEDY:** Do you recall when that was?

23 **PROSPECTIVE JUROR NO. 33:** It was about two years
24 ago, three years ago.

25 **MS. KENNEDY:** And do you recall where you actually

1 worked in the facility?

2 **PROSPECTIVE JUROR NO. 33:** No.

3 **MS. KENNEDY:** No. Do you remember what you did at
4 the facility?

5 **PROSPECTIVE JUROR NO. 33:** I'm sorry?

6 **MS. KENNEDY:** What did you do there?

7 **PROSPECTIVE JUROR NO. 33:** I didn't actually work
8 there. I was hired.

9 **MS. KENNEDY:** Oh.

10 **PROSPECTIVE JUROR NO. 33:** I never took the job, but
11 I -- that's me going to the facility or whatever. I was just
12 answering that.

13 **MS. KENNEDY:** Okay. I'm sorry. I misunderstood.
14 Did you -- were you actually offered a position there?

15 **PROSPECTIVE JUROR NO. 33:** Yes, ma'am.

16 **MS. KENNEDY:** And what position were you offered?

17 **PROSPECTIVE JUROR NO. 33:** Shoot. I forgot what the
18 position was. I know it was just a nighttime position. I
19 don't know. I don't remember. I don't recall.

20 **MS. KENNEDY:** And any reasons why you decided not to
21 go work at the facility?

22 **PROSPECTIVE JUROR NO. 33:** Just at the time I didn't
23 think it was the right move to do -- I mean, to make. Just I
24 had -- I had other options opening as well.

25 **MS. KENNEDY:** Okay. All right. Thank you very much,

1 sir.

2 **PROSPECTIVE JUROR NO. 33:** Yes.

3 **MS. KENNEDY:** You've heard -- we've had some
4 questions asked of the panel about Elon Musk. If you are
5 picked for this jury, one of the instructions that you may get
6 is you can't go on the internet and do other things. Do you
7 think if you are picked for this jury and you see something in
8 the news about Elon Musk, do you think that would be something
9 you could put out of -- out of your mind? And can you agree
10 not to read any articles or Tweets or anything else that
11 Mr. Musk may put out at any point in time? Does anyone have a
12 problem with that?

13 (No response.)

14 **MS. KENNEDY:** Any concern about that?

15 (No response.)

16 **MS. KENNEDY:** Also, in this case, in a civil case,
17 the only way to sort of compensate someone for a wrong is with
18 money damages. So my question here is: If, in fact, Mr. Diaz
19 does not prove his case, although you may think something may
20 have happened or you may feel sorry for him or you may hear
21 some evidence that makes you feel uncomfortable and he doesn't
22 meet his burden of proof, is there anyone here who says: You
23 know what? I still think I should award damages because I feel
24 sorry for Mr. Diaz? Does anyone feel that way?

25 (No response.)

1 **MS. KENNEDY:** Does anyone here on the venire if you
2 were an attorney for Tesla would think: You know what? I'm
3 probably not the right juror for this case for Tesla. I just
4 think right now I just -- there is nothing Tesla can say that
5 would allow me to find in favor of Tesla?

6 (No response.)

7 **MS. KENNEDY:** So everyone here can listen to all the
8 evidence, wait until the end, and make a decision?

9 (No response.)

10 **MS. KENNEDY:** Let me ask a couple individual
11 questions then. Ms. -- I'm sorry, Juror No. 12. Thank you.

12 And you said -- I believe you said that your cousin was
13 fired from HR at Tesla. Do you know if your cousin was a Tesla
14 employee or a contractor?

15 **PROSPECTIVE JUROR NO. 12:** A Tesla employee.

16 **MS. KENNEDY:** Okay. And do you recall how long ago
17 that was?

18 **PROSPECTIVE JUROR NO. 12:** Three or four years ago.

19 **MS. KENNEDY:** So it would be sometime in 2018,
20 2019-ish?

21 **PROSPECTIVE JUROR NO. 12:** Yes. Yeah.

22 **MS. KENNEDY:** Okay. And how long did your cousin
23 work there at the time that he or she was let go?

24 **PROSPECTIVE JUROR NO. 12:** She worked there for two
25 years I think. It wasn't a super long time.

1 **MS. KENNEDY:** And do you know, did she work at the
2 Fremont location?

3 **PROSPECTIVE JUROR NO. 12:** Yes.

4 **MS. KENNEDY:** And did you ever have any conversations
5 with your cousin about any type of base chart issue or
6 personnel issue or anything at the Tesla facility?

7 **PROSPECTIVE JUROR NO. 12:** Not anything besides,
8 like, just annoying employees. Not, like -- yeah, it's just,
9 you know, she's just telling me about her day or whatever.

10 **MS. KENNEDY:** To your knowledge, do you know if your
11 cousin had any dealings with any of the contract companies, the
12 staffing companies, that worked at -- or provided services to
13 Tesla?

14 **PROSPECTIVE JUROR NO. 12:** Not that I know of.

15 **MS. KENNEDY:** Thank you very much.
16 Juror No. 18.

17 Yes. Thank you. I think Ms. Ellis?

18 **PROSPECTIVE JUROR NO. 18:** Yes.

19 **MS. KENNEDY:** A couple questions. I wanted to follow
20 up with a couple questions that Judge Orrick asked you about.

21 You mentioned that sometimes you help employees when they
22 make complaints at work. Are you, like, an ombudsman or an
23 employee advocate? What is that?

24 **PROSPECTIVE JUROR NO. 18:** No. It was more they were
25 discussing an incident with me, and I am a manager there and so

1 my advice was to take your concern to HR, and -- because
2 sometimes people are hesitant to do so.

3 **MS. KENNEDY:** Understood.

4 And was it -- was it your sort of training that you got
5 that if there's an employee complaint, it needs to go to HR,
6 handled by HR?

7 **PROSPECTIVE JUROR No. 18:** I mean, it depends on what
8 kind of thing it is.

9 **MS. KENNEDY:** Understood.

10 **PROSPECTIVE JUROR NO. 18:** You know, but -- but,
11 yeah. If somebody's -- you guys were asking about it in
12 relation to discrimination I believe was that questioning. So
13 I would absolutely send them to discuss their situation.

14 **MS. KENNEDY:** In your employment experience, did you
15 ever get any type of anti-harassment, anti-discrimination
16 training?

17 **PROSPECTIVE JUROR NO. 18:** Well, we do -- we do our
18 typical California harassment and all of that, you know, every
19 year, and it -- it absolutely is a liability to not address
20 things if they're brought to your attention.

21 **MS. KENNEDY:** Understood.

22 And what is your understanding as to what should be done
23 when there's a complaint of harassment or discrimination or
24 retaliation?

25 **PROSPECTIVE JUROR No. 18:** Well, in my role, I would

1 recommend that they go to HR and they would discuss that with
2 HR; and typically at that point if there was a reason to do so,
3 HR would perform an investigation.

4 **MS. KENNEDY:** And is it your understanding that when,
5 say, a complaint comes up or there's an issue that's brought to
6 HR or management and the matter is handled with discipline or
7 no discipline or separation, is it your understanding that
8 that's sort of what HR or management is supposed to do to
9 resolve any type of workplace issues?

10 **PROSPECTIVE JUROR NO. 18:** Can you ask it again?

11 **MS. KENNEDY:** Sure. That was a little bit of a --

12 **PROSPECTIVE JUROR NO. 18:** There's a lot in there.

13 **MS. KENNEDY:** That was a lawyer-like question so I
14 apologize. Let me ask it a better way.

15 Based on your training and just being a manager, is it
16 your understanding that when a complaint is brought, whether to
17 HR or to a manager, and the matter is dealt with and a decision
18 made, either to discipline or fire or retrain or whatever, is
19 that your understanding, based on your training and experience,
20 that that's sort of how workplace issues should be handled and
21 resolved?

22 **PROSPECTIVE JUROR NO. 18:** I -- I think that it's
23 always individual, and that that -- there may be times when
24 things are handled differently depending on the situation.
25 People come to applicable agreements. People part ways.

1 People get fired. People sue. I mean, there's a lot of
2 different things, and I'm -- at that point I'm not involved.

3 But, you know, I think what I was mentioning before was
4 that when I had been directly asked about "This happened to me
5 and it was discrimination," my advice was to speak to HR.

6 **MS. KENNEDY:** Right. And I don't want to go into
7 your personal issue about that, but did you, in fact, go to HR
8 and was the matter resolved to your satisfaction or not to your
9 satisfaction?

10 **PROSPECTIVE JUROR NO. 18:** I'm unsure about several
11 of them. So, you know, because, again, it's not mine to pry.

12 **MS. KENNEDY:** Okay. Understood. Thank you very
13 much. I appreciate it.

14 **PROSPECTIVE JUROR NO. 18:** Thank you.

15 **MS. KENNEDY:** A couple final questions to the group.

16 In looking -- just hearing what you've heard for the past
17 couple of hours and understanding that there is a dispute
18 because we're actually here, is anyone holding it against Tesla
19 or thinking that Tesla probably should have resolved this
20 before? That there must have -- something really should have
21 happened, something truly did happen and Tesla is at fault?
22 Does anyone believe that right now or have a feeling that
23 probably something did happen because we actually ended up in a
24 trial?

25 (No response.)

1 **MS. KENNEDY:** Let me ask Juror No. 26. Mr. Hall?

2 Based upon what you've heard so far, do you have a belief one
3 way or another that something must have happened for us to have
4 made it this far to an actual trial?

5 **PROSPECTIVE JUROR NO. 26:** No.

6 **MS. KENNEDY:** Do you have any concerns one way or
7 another as to what the -- do you have any idea of what the true
8 facts are?

9 **PROSPECTIVE JUROR NO. 26:** No. I believe that
10 everything will be revealed should I be selected.

11 **MS. KENNEDY:** All right. Thank you very much,
12 Mr. Hall. I appreciate that.

13 All right. Your Honor, I think I'm just about done. If I
14 could just take a look my notes real quick.

15 **THE COURT:** Sure.

16 (Discussion held off the record amongst defense
17 counsel.)

18 **MS. KENNEDY:** Your Honor, I don't have any more
19 questions.

20 **THE COURT:** Great. Thank you very much.

21 So, ladies and gentlemen, you will be thrilled to know
22 that things have been moving along very well, and the next
23 thing that I have to do is to talk with the lawyers for a
24 little bit before we get into the final actual selection
25 process.

1 So I'm going to ask you to take another break, and this
2 one just for ten minutes, and I'll ask you to just ten minutes
3 from now be outside the door and come back to the same place
4 and we'll -- we'll conclude the jury selection process.

5 Remember what I told you before about not communicating
6 with anybody about this case in any way, shape, or form, and
7 we'll see you in about ten minutes.

8 (Proceedings were heard out of presence of prospective
9 jurors:)

10 **THE COURT:** All right. Please be seated everybody.

11 I'm going to give you a moment to talk with each other --
12 with your teams about the hardship and cause; but, Ms. Kennedy,
13 I wondered whether you had a response on the stock question,
14 whether you agreed with --

15 **MS. KENNEDY:** Yes, I did, Your Honor. I took a look
16 at that case.

17 **THE COURT:** If you'd speak into the microphone, that
18 will be a good thing.

19 **MS. KENNEDY:** Oh, sorry. I could do it here or --

20 **THE COURT:** Either one.

21 **MS. KENNEDY:** Let me do it here. This is probably
22 better because I think I was going too fast for the court
23 reporter.

24 Yes, I did look at the case, which is *Getter v. Wal-Mart*
25 *Stores, Inc.*, 66 F.3d 1119, 1995 case. In that particular

1 case, Your Honor, that was a personal jury case and the issue
2 was whether or not a prospective juror who not only owned --
3 advised that he owned stock, his wife was also an employee of
4 Walmart, and the issue then became whether or not the defense
5 had to use a -- I'm sorry -- the plaintiff had to use a
6 peremptory strike over cause.

7 And I think the issue presented by Mr. Alexander is that
8 two jurors, I think Juror 8 and No. 20, supposedly own stock in
9 Tesla.

10 First, I would say that the number of shares outstanding
11 in Tesla is probably a billion shares.

12 **THE COURT:** Yes. So this is not a question of an
13 actual. It's a question of an appearance of a conflict.

14 **MS. KENNEDY:** Right, and understood. And I don't
15 know what their stock ownership is. I'm pretty sure that
16 whatever it is, it's probably in a mutual fund or whatever.

17 But simply having a financial interest, small that it may
18 be given the market cap for Tesla, and the case that's cited
19 was more leaning toward the issue that the juror's wife was an
20 employee of Walmart. Because if you see the cases it cited,
21 namely, the case -- I'm sorry -- the case *Gladhill*, which is
22 743 F.2d 1049, a 1984 case; and *Francone*, 145 F.2d at 732,
23 which was a Fifth Circuit 1944 case, those cases all talked
24 about prospective jurors being employed or having someone
25 employed by one of the defendants.

1 I think about here, though, in this particular case, given
2 the case that was cited by Mr. Alexander, and the fact that
3 probably anyone who has a mutual fund or some type of financial
4 instrument may have a small financial interest in one of the
5 parties, that is not automatically disqualifying.

6 **THE COURT:** Mutual funds are different than direct
7 stock ownership.

8 **MS. KENNEDY:** Yes.

9 **THE COURT:** So maybe that's something to clarify.

10 **MS. KENNEDY:** Yes.

11 **THE COURT:** I mean, I know that if I knew that I
12 owned Tesla stock, I wouldn't be sitting here. And I think
13 there's a Fourth Circuit case that we found briefly in the
14 break that is also consistent with that Tenth Circuit case on
15 the topic.

16 **MS. KENNEDY:** Yes. And, Your Honor, I don't dispute
17 that, but I think the issue then becomes really what is that
18 financial sort of interest. And I agree it's --

19 **THE COURT:** If I own one share in Tesla, I couldn't
20 be here.

21 **MS. KENNEDY:** Yes, I understand, but I think that's a
22 different standard than what a juror would be talking about in
23 the case, and both said that they want -- they could be fair.
24 There's going to be biases, there's going to be interests, but
25 I think the question should be: What is that ownership? If

1 they own one share of Tesla stock out of a billion, that's not
2 going to be an issue, an issue of bias.

3 **THE COURT:** I understand the substantive argument
4 that you're making and I agree with it, but the -- there is a
5 more specific conflict that I don't know whether it can be
6 waived or not.

7 Mr. Alexander, do you have --

8 **MR. ALEXANDER:** A couple of things, Your Honor.
9 First, to compare the ownership to the number of stock that
10 Tesla has is not the issue. It's how valuable is the stock to
11 that individual. If that individual has stock and that's the
12 primary stock that they have and they care about it going up or
13 down, they would have some inherent bias. It's about the value
14 to them not the value relative to the total of Tesla.

15 Also, within the case that we cited, there are cases that
16 are cited for the proposition that a stockholder in a company
17 which is a party to a lawsuit is incompetent to sit as a juror
18 is so well settled as to be black letter law that. That's
19 quoting *Chestnut* -- C-H-E-S-T-N-U-T -- vs. *Ford Motor Company*,
20 445 F.2d 967 at 971. That's the Fourth Circuit, a 1971 case.

21 And there's also *Vasey* -- V-A-S-E-Y -- 29 F.3d at 1460;
22 and *Gladhill* -- G-L-A-D-H-I-L-L -- 743 F.2d at 1050.

23 Also referring to Code of Civil Procedure 229(b), it
24 refers to implied bias. It refers to relationships of stock
25 and ownership.

1 I think that to -- under the circumstances, if they have
2 an ownership in a company under circumstances where we're
3 seeking punitive damages, that just is automatic circumstances
4 where those individuals should not be sitting and basically
5 being asked to award punitive damages against a company that
6 they own stock in. I think it's just inherent bias.

7 **THE COURT:** All right. Ms. Kennedy.

8 **MS. KENNEDY:** Your Honor, just -- just so we're
9 clear, I think that the issue, the special issue, is whether or
10 not the -- the juror has a -- has a financial interest in the
11 outcome of what could possibly happen here, not just -- not
12 just sort passive stock ownership.

13 And the case that is referred to in the *Getter vs.*
14 *Wal-Mart* case is referred to as the *Vasey vs. Martin Marietta*
15 *Corporation*, 29 F.3d 1460 at 1468, Tenth Circuit 1994. And
16 basically the standard is a direct financial interest in the
17 trial's outcome.

18 So it -- just because in this day and age in 2021 somebody
19 owned some miniscule amount of stock -- which, again, I don't
20 know what their stock ownership is, I would assume it's not
21 something that is significant -- that it's not implied that
22 there is going to be automatic bias because I think the court
23 has held that the implied bias doctrine is not to be likely
24 invoked, but must be reserved for those extreme and exceptional
25 circumstances that leave serious question whether the trial

1 court subjected a party to manifestly unjust procedures
2 resulting in a miscarriage of justice. And this is referring
3 to the case *Zia Shadows LLC vs. City of Las Cruces*.

4 So I think that the standard here is a higher standard
5 than simply having ownership, some passive ownership, in some
6 publicly traded stock. It's got to be a higher standard.

7 **THE COURT:** All right. Mr. Organ.

8 **MR. ORGAN:** Yes, Your Honor. Thank you.

9 I'd just -- I would just like to bring to the Court's
10 attention, not necessarily under these statutes or the
11 authority, but I have been part of a case where punitive
12 damages were awarded and it was overturned on appeal because of
13 juror misconduct because one of the jurors, it turned out,
14 owned stock in Kroger Company, which was the parent of Ralph's,
15 which was my -- my case against.

16 And when our expert came in to give the valuation of the
17 company, in the juror deliberations, that juror said: I know
18 the stock is worth less than that because I own the stock. And
19 that's the problem, is that the person will have individualized
20 knowledge that can infect the jury and then we're going to be
21 back here. So --

22 **THE COURT:** I am fairly confident -- I think -- the
23 issue I think is going to be more black letter than your --
24 some of you are suggesting.

25 I will take one quick look at this again at a break when

1 we finish our discussions here, but I have a hunch I'm going to
2 need to strike them. I will confirm, however, that they own
3 stock in Tesla as opposed to a mutual fund that might have some
4 Tesla stock in it, but I think that's going to be the
5 distinction.

6 "Passive ownership" isn't a meaningful term. It's either
7 you've got -- either you have a direct conflict or you don't,
8 and I -- I understand sort of the pragmatism of the argument,
9 but I don't think it actually works for Tesla, but I will
10 take -- I will take a quick look at that.

11 All right. So why don't you discuss amongst -- tell me --
12 raise your hand when you're ready to talk cause and hardship.

13 (Pause in proceedings.)

14 **THE COURT:** All right. So the counsel have had a
15 chance to look at this.

16 I am inclined to relieve for hardship Jurors 11 and 31 and
17 Jurors 24 and 30 for cause, and then inquire of Jurors 8 and 20
18 of what the -- what their stockholding is; and if it's a direct
19 holding, I think because of the case cited by Mr. Alexander and
20 the Fourth Circuit case and what seems to be fairly clear law,
21 I would remove 8 and 20.

22 **MS. KENNEDY:** I'm so sorry, Your Honor. Who were the
23 two for hardship?

24 **THE COURT:** No. 11, the student; and No. 31.

25 **MS. KENNEDY:** 31. Thank you, Your Honor.

1 **THE COURT:** Okay. So, Mr. Alexander, I'll go to you
2 first. Do you have any comments on that or anything else you
3 would like me to look at?

4 **MR. ALEXANDER:** Your Honor, not at this time. When
5 we move further to other cause, I can, but at this time based
6 on the Court's inquiry --

7 **THE OFFICIAL REPORTER:** I'm sorry, Mr. Alexander.
8 Can you use the microphone, please?

9 **THE COURT:** Get to a mic, and -- but I want to hear
10 if you have -- if you think that there are other people who
11 should be relieved as a result of cause, I'd like to hear to
12 now.

13 **MR. ALEXANDER:** Thank you, Your Honor.
14 With regard to No. 24, Mr. Ruchamkin -- I'm sorry. I
15 missed that. You removed him for cause.

16 **THE COURT:** Yeah.

17 **MR. ALEXANDER:** Great.

18 And then No. 31 --

19 **MR. ORGAN:** The judge already removed him.

20 **MR. ALEXANDER:** I guess that's it. All right. I'm
21 fine.

22 **THE COURT:** Okay. Ms. Kennedy.

23 **MS. KENNEDY:** No, we have no other cause.

24 **THE COURT:** Okay. So we're in complete agreement,
25 and so we're ready -- we're going to be ready to do peremptory

1 challenges when the jury comes back after I check on 8 and 20.

2 And the way that that happens is you'll pass a piece of
3 paper back and forth; and if you both pass, you're done. If
4 you -- if one of you passes, you don't get to save that
5 challenge for the end. So just be aware.

6 All right. Ms. Davis, let's get the jury back in.

7 (Proceedings were heard in presence of prospective
8 jurors:)

9 **THE COURT:** All right. You can all be seated. Thank
10 you.

11 Juror No. 8, I have a question for you that I should have
12 asked you earlier. Would you mind stepping up so we can do
13 that?

14 You had indicated that you owned stock in Tesla. Is
15 that -- do you own it specifically in Tesla? Is it part of a
16 mutual fund or some combination of funds?

17 **PROSPECTIVE JUROR NO. 8:** My -- my husband does the
18 investing, and he told me that he just bought shares.

19 **THE COURT:** He just bought shares. And is that --

20 **PROSPECTIVE JUROR NO. 8:** Yes. Tesla shares.

21 **THE COURT:** Okay. And so -- and do you hold that
22 jointly?

23 **PROSPECTIVE JUROR NO. 8:** Yes.

24 **THE COURT:** Okay. Thank you.

25 And, Juror No. 20, you also -- come on up to the mic.

1 I think you indicated that you owned shares in Tesla. Do
2 you own those directly or as part of a mutual fund? Or how is
3 it held?

4 **PROSPECTIVE JUROR NO. 20:** Stock.

5 **THE COURT:** I'm sorry?

6 **PROSPECTIVE JUROR NO. 20:** Stock. Not part of a
7 mutual fund. My wife -- under my wife's name. She bought
8 stock of -- Tesla stock.

9 **THE COURT:** Okay. All right. So you both -- so
10 that's family finance, family stock?

11 **PROSPECTIVE JUROR NO. 20:** Yes.

12 **THE COURT:** Okay.

13 All right. So for that reason, I'll ask you to stay where
14 you are for a second, but because of that stockholding, the law
15 is clear that you can't sit on a case. Even though you would
16 otherwise be completely impartial and it wouldn't make a
17 difference to you, it's just the way that the law works.

18 So I'm going to end up excusing you, and I'm also going to
19 excuse Juror No. 11, Juror No. 30, and Juror No. 31. So you
20 are all -- and Juror No. 24.

21 So the six of you may now leave the courtroom and thank
22 you very much for your service. You have done what you needed
23 to do for the country today.

24 (Prospective Jurors No. 11, 24, 30, and 31 excused.)

25 **THE COURT:** All right. So, ladies and gentlemen, the

1 next thing that happens here is that each side gets to excuse
2 some people from the panel. This is called peremptory
3 challenges. They can be made without giving any reason at all.
4 This procedure gives the parties the ability to participate
5 more fully in the selection of the jury who's going to decide
6 the case. It's part of our system of justice. It let's the
7 parties feel more comfortable with the jury and, therefore, be
8 more satisfied with the result since they had the opportunity
9 to select you.

10 So if you end up having to be excused, it's nothing
11 personal. Don't let it -- don't consider it as a reflection on
12 you or the quality of your service. You will have done your
13 job for the country.

14 The way that this is going to happen is that the parties
15 are going to quietly pass a piece of paper back and forth and
16 then give it to me. I'm going to look at it, and then we'll
17 proceed from there.

18 So, Ms. Davis, if you would give it to Mr. Alexander.

19 (Brief pause.)

20 **THE COURT:** And if you feel more comfortable standing
21 rather than sitting, please feel free to do that.

22 (Pause in proceedings.)

23 **MR. ALEXANDER:** Your Honor, can we have a sidebar to
24 address this?

25 **THE COURT:** Ladies and gentlemen, I'm going to ask

1 you to step outside, get a little more exercise. Please don't
2 go away.

3 (Proceedings were heard out of presence of prospective
4 jurors:)

5 **THE COURT:** All right. Mr. Alexander.

6 **MR. ALEXANDER:** Your Honor, the defendant has struck
7 Jurors No. 26 and 33, both of whom are African American, and so
8 the -- it raises a *Batson-Wheeler* issue as to whether there is
9 a basis for articulating a reason other than race to disqualify
10 those individuals.

11 In each of the cases, I believe that the information they
12 gave indicates that they could be fair and impartial; and so
13 under those circumstances, I think the onus is on the defendant
14 to indicate a nondiscriminatory reason for the selections that
15 were made.

16 **THE COURT:** All right. So your challenge is both to
17 26 and 33?

18 **MR. ALEXANDER:** Yes, Your Honor.

19 **THE COURT:** All right. Ms. Kennedy.

20 **MS. KENNEDY:** Yes. May I be heard?

21 We'll talk about Juror No. 33 first because I questioned
22 him. And if you recall, Mr. Bradford's testimony was that he
23 had heard the "N" word a lot. His mother was in
24 South Carolina, had been mistreated. He has a friend working
25 at Tesla, and she was paid less and -- I'm trying to read my

1 writing here.

2 Oh, and the friend was wrongfully terminated at Tesla.
3 That was Mr. Bradford, No. 33.

4 And as to Juror No. 26, my initial reaction with Mr. Hall
5 is I could barely understand him when he was talking, and he
6 came up, sat in the back row. I couldn't understand him for a
7 lot.

8 But he also says that, I think when he was 17 years old at
9 a grocery store, he was called the "N" word. He's an intern,
10 quality associate -- a quality analyst, I think it's an
11 associate, for about six months. And just from a comprehension
12 perspective, I didn't think he was a good juror to understand
13 what we're going to be talking about here based on his
14 responses to me as well as to Your Honor.

15 **THE COURT:** All right. So you know with respect to
16 the non-understanding him, he was no more soft spoken than five
17 or six of the people who spoke, and I thought he actually spoke
18 quite well. So I'm not -- that would not be a
19 nondiscriminatory explanation.

20 Mr. Alexander, what's your response to those, to
21 Ms. Kennedy's.

22 **MR. ALEXANDER:** With regard to Prospective Jurors
23 No. 2, 12 and 23, they were also victims of race discrimination
24 and the only difference why they aren't identified would appear
25 to be they aren't African American.

1 And the fact that the African American potential jurors
2 experienced the "N" word or that type of discrimination is a
3 nature of race, and so to identify those things as the basis
4 for selection is basically to identify race-based indicators
5 for why the decision was made to select them.

6 I don't think the defendant has stated a non-race
7 motivation for the selects that they've made. I think the
8 statements have actually identified race as the factor that was
9 used in making the selection.

10 **THE COURT:** Ms. Kennedy, would you like to respond to
11 that?

12 **MS. KENNEDY:** Yes. Well, I will say definitively
13 race was not an issue with respect to the responses.

14 **THE COURT:** I'm sorry. Say that again.

15 **MS. KENNEDY:** I'm sorry. Race was not an issue in
16 either one of them. It had to do with their responses to my
17 questions as well as the Court's questions.

18 Also, as to Juror No. 26, when he talked about his grocery
19 store experience, he said that he complained and nothing -- his
20 manager did nothing. So what I -- I would be -- more than
21 frank is what I'm looking for, I'm looking for people who have
22 an experience -- who have life experiences that they can set
23 aside to come and look at these allegations in this case.

24 As we know, there's going to be inflammatory language in
25 this case, and Mr. Hall, in particular, when he said that he --

1 he did not believe that his complaint was taken seriously,
2 that's exactly what I believe Mr. Diaz is going to be talking
3 about. For that reason, that's one of the reasons that I
4 wanted to have him off the jury.

5 And I actually didn't think we were going to get down into
6 26 and 33, to be quite honest with you. So because the two
7 Asian jurors were both taken off because of their investment in
8 Tesla, so if we're going to -- so my point is, though, I never
9 anticipated giving the three strikes in the 21 people that we
10 had, that we would actually get down to those jurors.

11 But race --

12 **THE COURT:** I don't understand that as an
13 explanation, Ms. Kennedy, for your -- for striking them.

14 **MS. KENNEDY:** Well, because, Your Honor, we're
15 looking at the number of jurors that were left. We only have
16 nine jurors, and I had one strike left and I used the last
17 strike. Those two jurors happened to be the last two jurors on
18 the panel, but this was not based on race. It's based on their
19 answers to questions and how they -- and how -- and what their
20 life experiences were and their responses to those questions.

21 **THE COURT:** So, Mr. Alexander, the one -- I don't see
22 the basis for a strike on 26. I just don't see it.

23 33, the one thing that Ms. Kennedy indicated was the
24 connection to Tesla. That -- that he had a friend there,
25 wrongful -- she said the friend who was -- someone who was

1 wrongfully terminated and paid less. He did apply for a job
2 there also.

3 So why wouldn't that be a nondiscriminatory reason to
4 strike him?

5 **MR. ALEXANDER:** Your Honor, in other cases that
6 address *Batson-Wheeler* objections, the court has rejected the
7 secondary reason given when the primary -- when the first
8 explanation given was a racially discriminatory reason. In
9 other words, once you have made the statement as to your
10 explanation and then been called on it, the new explanation can
11 be ignored.

12 **THE COURT:** But this was the first explanation that
13 Ms. Kennedy made with respect to 33.

14 **MR. ALEXANDER:** I thought the -- I thought the
15 grocery issue was a race-based issue.

16 **THE COURT:** That's 26.

17 **MR. ALEXANDER:** All right. I'm sorry.

18 (Pause in proceedings.)

19 **MR. ALEXANDER:** So --

20 (Discussion held off the record between plaintiffs'
21 counsel.)

22 **MR. ALEXANDER:** I thought testimony of No. 33 was
23 that he didn't have any personal knowledge of it. He just
24 heard that she was not hired. She was wrongfully terminated,
25 but he didn't know the circumstances, he heard it secondhand.

1 But in terms of the job, he turned down the Tesla job. I
2 think that's my notes.

3 (Pause in proceedings.)

4 **MR. ALEXANDER:** And others were terminated by Tesla
5 and they were not kicked off the jury. In other words, if you
6 make -- if you try and follow the logic of why they picked 33,
7 No. 12, they didn't select No. 12 to be kicked off the jury.

8 So if you look at the -- the explanation does not match up
9 if you compare responses given by different prospective jurors.

10 **THE COURT:** Ms. Kennedy.

11 **MS. KENNEDY:** Yes, I can respond. As to Juror -- if
12 we're going to compare it to Juror No. 12, the cousin who
13 worked for HR about she's handling issues with annoying
14 employees, very different. In HR I want to have someone --
15 I'll be honest, I want someone who has -- someone who knows
16 something about HR on this. I have no problem with people with
17 HR.

18 Her cousin -- she said her cousin worked for Tesla in HR.
19 She also said her cousin -- or was a Tesla employee for a
20 contractor. And she also testified, Ms. Uyeda, had a father
21 that worked in HR. That's why she wasn't struck.

22 As to the issue concerning Mr. Bradford, Juror No. 33,
23 it's a very different life experience in a race harassment case
24 to come in and say, one, you have a friend working at the
25 defendant; two, you talked about your mother being treated

1 unfairly; and, three, that -- that he's heard the "N" word a
2 lot.

3 So regardless of the questions by the Court or anyone
4 else, there is an inherent bias there that cannot be overcome.
5 And Tesla in this type of case, given the inflammatory
6 languages -- language, that that person is going to be biased
7 against Tesla regardless of the evidence.

8 And in this particular case Mr. Bradford was unique, as I
9 recall, in his test- -- in his statements to the Court and his
10 statements to me in particular about his experiences and about
11 his relationship to Tesla. And the idea that his friend worked
12 at Tesla and these biases make him an unsuitable juror in this
13 particular case.

14 **THE COURT:** All right.

15 **MS. KENNEDY:** Oh, and I'm sorry, Your Honor, you
16 asked about Juror No. 26. My issue on Juror No. 26 is that he
17 said he worked at a grocery store and that nothing happened,
18 nothing was done.

19 In this particular case, I expect Mr. Diaz to make that
20 exact same argument over and over again about every complaint
21 that he made. And in my notes, that is exactly what I have
22 here, that that's what the issue was. And that nothing
23 happened, which he volunteered, is the reason that Juror 26 was
24 struck by me.

25 Because that's what I anticipate Mr. Alexander is going to

1 say in his opening statement; that Tesla did nothing, the
2 staffing agency did nothing, and Tesla was supposed to do
3 something and they didn't. That's the reason Mr. Hall was
4 struck.

5 **THE COURT:** I'm going to take a short break and I'll
6 be back here. So don't go anywhere. It will take me about a
7 minute or two.

8 (Whereupon there was a recess in the proceedings
9 from 12:59 p.m. until 1:03 p.m.)

10 (Proceedings were heard out of presence of prospective
11 jurors:)

12 **THE COURT:** All right. So my job in handling a
13 *Batson* challenge at step one is there a prima facie case made
14 with respect to the strike, and I think clearly there is. The
15 two people that were struck that are under challenge are
16 African American.

17 And at step two, the burden shifts to a nondiscriminatory
18 explanation. And I don't think with respect to Juror No. 26, a
19 nondiscriminatory explanation was made; and I think he is
20 perfectly able to be a fair and impartial juror, and so I will
21 not allow the strike with respect to Juror No. 26.

22 With respect to Juror No. 33, I do think a
23 nondiscriminatory explanation has been given. It was somewhat
24 mixed with a race-based one, but I think -- I think there are
25 significant factors that would show a nondiscriminatory

1 explanation.

2 And then at step three the issue is: Was it purposeful?
3 And I to do think because of the connection that he had with
4 Tesla, which I think is different than others, and his place --
5 the context of his employment, I think there's a -- there are
6 distinguishing factors with Juror No. 12. So I would allow the
7 strike of Juror No. 33.

8 So with that, yes, I'd love to see the strikes.

9 (Whereupon document was tendered to the Court.)

10 (Brief pause.)

11 **THE COURT:** All right. So I am -- what I'm looking
12 at is my list is not completely accurate because the -- I
13 didn't have a couple of people who didn't show, I think.

14 So, Ms. Davis, have you been keeping up on your list?

15 (Discussion held off the record between the Court and
16 the Courtroom Deputy.)

17 **THE COURT:** All right. So let me confirm who the
18 jurors are period.

19 **MS. NUNLEY:** Is it okay if Mr. Diaz runs to the
20 restroom quickly?

21 **THE COURT:** He can listen. Oh, and he can go to the
22 restroom too, yeah.

23 **MS. NUNLEY:** Thank you, Your Honor.

24 (Mr. Diaz exits the courtroom.)

25 **THE COURT:** So the jurors left after the strikes

1 are -- Mr. Alexander, why don't you tell me who you have.

2 **MR. ALEXANDER:** Your Honor, we have No. 1, No. 2,
3 No. 6, No. 9, No. 12, No. 13, No. 23, No. 25, and No. 26.

4 **THE COURT:** Okay. Ms. Kennedy, do you share that?

5 **MS. KENNEDY:** Yes, I concur.

6 **THE COURT:** Okay. Good. So that's our jury.

7 And let's call in the jurors, and then we'll have them
8 sworn in.

9 **MR. ORGAN:** Your Honor?

10 **THE COURT:** Yes, Mr. Organ.

11 **MR. ORGAN:** Mr. Diaz just ran down to the restroom.
12 Could we wait for him to come back?

13 **THE COURT:** Yeah, we should. Yes.

14 **MR. ORGAN:** Thank you, Your Honor.

15 (Pause in proceedings.)

16 (Jury enters the courtroom at 1:13 p.m.)

17 **THE COURT:** All right. Please be seated everybody.

18 All right. So thank you all again for your patience, but
19 we're now at the conclusion of the -- of jury selection.

20 And before I tell you who has been excused, again, these
21 were challenges for which it has nothing to do with anything
22 except for the parties' selection. You have done every --
23 you've done your jury service in the best way, and I appreciate
24 it very much.

25 But the following jurors are excused:

1 Juror No. 5, 19, 4, 18, and 33. So you may now leave and
2 with the thanks of the judiciary.

3 (Prospective Jurors 4, 5, 18, 19, and 33 excused.)

4 **THE COURT:** Then I'd like everybody else, if you
5 would, to fill in either seats in the jury box or come to the
6 first row on the left-hand side because you are going to be the
7 jury, and I'm about to swear you in.

8 (Brief pause.)

9 **THE COURT:** All right. Ms. Davis.

10 **THE CLERK:** If you'd please stand again and raise
11 your right hands.

12 (Jury sworn.)

13 **THE COURT:** All right please be seated for just a
14 moment.

15 So you've now been sworn in to be the jury in this case.
16 The case will start on Monday morning at 8:30. I'd like you to
17 be here by 8:15 because I start getting nervous when the jury
18 is not all ready to go. And we will run, as I said earlier,
19 Monday through Friday 8:30 to 1:30 with a couple of 15-minute
20 breaks.

21 Ms. Davis is going to escort you now back to the jury room
22 that we're going to be using and give you a few sort of
23 preliminary instructions on how to maneuver through the
24 courthouse to get up here.

25 And we'll look forward to seeing you bright and early on

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1 Monday morning. So thank you very much.

2 Ms. Davis.

3 Please follow Ms. Davis.

4 (Jury exits the courtroom at 1:16 p.m.)

5 **THE COURT:** All right. Please be seated.

6 So I will look forward to seeing all of you at
7 8:00 o'clock on Monday, and make sure you've discussed what
8 you're doing with your demonstratives and who the witnesses
9 are.

10 And I appreciate how well the parties are working together
11 to get this show on the road, and we're going to hit the road
12 on Monday morning at 8:00 o'clock.

13 Thank you all. Have a good weekend.

14 (Proceedings adjourned at 1:17 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Friday, March 10, 2023